

# **HONDURAS DEMOCRACY AND GOVERNANCE ASSESSMENT**

Submitted to:  
USAID

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The views expressed in the following assessment are those of the authors and do not necessarily reflect the opinions or policies of the U.S. Government.

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## ACRONYMS

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AMHON	Honduran Association of Municipalities
ANDI	<i>Asociación Nacional de Industrias</i>
CEDOH	<i>Centro de Documentación de Honduras</i>
CG	Controller General
CGT	<i>Confederación General de Trabajadores</i>
Clibre	<i>Comité por la Libertad de Expresión</i>
COCOCH	<i>Consejo Coordinador de Organizaciones Campesinas de Honduras</i>
COHEP	<i>Consejo Hondureña de la Empresa Privada</i>
CPC	Criminal Procedures Code
CSOs	Civil society organizations
CTH	<i>Confederación de Trabajadores de Honduras</i>
CUTH	<i>Confederación Unitaria de Trabajadores de Honduras</i>
DG	Democracy and governance
DCHA/DG	Bureau for Democracy, Conflict and Humanitarian Assistance/Office of Democracy and Governance
FDDH	<i>Fundación Desarrollo y Democracia de Honduras</i>
FFD	<i>Foro de Fortalecimiento a la Democracia</i>
FOCACH	Honduran Federation of Savings and Loan Cooperatives
FONAC	<i>Foro Nacional de Convergencia</i> (20)
FOPRIDEH	Federation of Private Development Organizations
FUNDEMUN	Municipal Development Foundation
GDP	Gross Domestic Product
GOH	Government of Honduras
GTZ	<i>Gesellschaft für Technische Zusammenarbeit</i> (German development agency)
HRN	National Radio of Honduras
ICITAP	International Criminal Investigations Training Assistance Program
IDB	Inter-American Development Bank
LAC	Latin America/Caribbean
MDDI	Municipal Development and Democratic Initiatives
MP	<i>Ministerio Público</i>
MSI	Management Systems International
NDI	National Democratic Institute
NGOs	Nongovernmental organizations
PC	Procedures Code
PL	Liberal Party
PN	National Party
RNC	National Civil Registry
ROL	Rule of law
SPS	Strategy and Program Support
TC	<i>Tribunal Superior de Cuentas</i>
TNE	<i>Tribunal Nacional de Elecciones</i>
UN	United Nations
UNDP	United Nations Development Program
USAID	United States Agency for International Development
USG	United States Government





## EXECUTIVE SUMMARY

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A Democracy and Governance Assessment was carried out in Honduras in order to contribute to the development of USAID/Honduras' strategic plan for the 2004-2009 period. The assessment had two objectives:

- To recommend areas in which to develop democracy and governance (DG) programs for the upcoming planning period.
- To clarify the role of DG programs in USAID/Honduras' overall portfolio.

### Honduras' Principal Democratic Challenge

The most dominant feature of the Honduran polity has always been the concentration of political and economic power among members of a small elite. The principal vehicles for maintaining concentrated political and economic power have been the two traditional political parties. The National Party and the Liberal Party have played a key role in Honduran political life since their creation over a century ago, one that survived periods when the interests of local economic elites and important U.S. actors combined to favor military governments. The parties have been the primary vehicles used by citizens—mainly elites, but also significant worker and middle class groups—to serve their individual interests. During the last 20 years, the power exerted by Honduran elites through the two parties has been exercised behind the formal trappings of a democratic state. Elections have been regularly held. The basic democratic rights of most citizens have been formally recognized. Competition for power has been tolerated, both within and between the two traditional political parties. But Honduras' economic elites have continued to use the two parties to control both electoral processes and governmental organizations.

The institutionalized concentration of power among the economic elites who control political parties—and through them, almost all governmental institutions—prevents Honduras' democracy from serving the interests of all Honduran citizens as well as it should, and stifles both political and economic development. The challenge Honduras now faces is to develop democratic institutions of government that all its citizens can use to practice participatory governance, guarantee the rule of law (ROL), and provide for general socioeconomic welfare.

### Political Reform Pressures

Significant external and internal pressures are pushing Hondurans to change the ways in which their political system operates. The most significant external pressure arises from Honduras' lack of competitiveness in an increasingly global world economy. Without adequate attention to the concentration of political and economic decision-making in a small and unaccountable elite, Honduras will continue to fail to implement the economic policy and business development measures it needs to take advantage of free trade opportunities.

Additional pressure for political reform derives from the increased attention to democratic governance and citizen participation given by the international donor community. Since the 1999 Stockholm Conference, where donors began to condition assistance more explicitly on better transparency, increased citizen participation, and improved governmental efficiency, Honduran political leaders and civil society have created "political space" for discussion and advocacy of governance reforms. There has been a sea of change in Honduran civil society over the last four years. Prior to Hurricane Mitch, nongovernmental organizations (NGOs) seldom broached governance and political reform concerns in public, and very few civic organizations even existed. Now, public discussion and advocacy of political reforms by NGO leaders and intellectuals are common. Party leaders are listening to civil society actors more, and they

know they need to respond to the reform pressures they are generating. Responsiveness to civil society concerns was an important element of President Maduro's election campaign, and led to a September 2001 pact among all presidential candidates to pursue political reforms.

It is now becoming clear to more and more Hondurans that practicing politics as usual will not help them face their society's most important challenges: poor governmental performance in providing services, bad economic policy decisions, misuse and waste of tax revenues, corruption, an uncompetitive investment environment, low growth, increased poverty, unreliable and inconsistent law enforcement, inadequate dispute resolution, poor public security and human rights violations. None of these problems can be dealt with successfully without addressing the problem of concentrated political and economic power. Those who enjoy power need to relax their control of political and economic decision making. This will not come about quickly, but the combination of current external economic pressures and internal political pressures now present in Honduras provide donors with an opportunity to help its reformers push the process along.

## **USAID Democracy and Governance Programs**

USAID/Honduras' main goal is to reduce poverty by increasing economic growth through greater trade and investment. In Honduras' case, efforts to increase trade and investment and improve democratic governance need to go hand in hand, both to help spur economic growth, and to help ensure that any increases in national income reduce rather than accentuate wealth disparities and poverty.

The Assessment Team recommends that USAID continue working in the rule of law, municipal development, and government accountability program areas. In addition, USAID should take full advantage of opportunities to help Hondurans address their country's primary DG challenge by working in a new program area: electoral reform.

More broadly, the Assessment Team recommends that in pursuing its programs the Mission employ three strategic approaches that seem best suited to the country context and development needs:

- Promote citizen participation in governance at all levels.
- Cooperate with other countries in exerting diplomatic pressure in favor of democratic reforms and open markets.
- Undertake initiatives to defend women's rights and support women's leadership throughout Honduran society.

The amount of DG funding anticipated to be available for Honduras over the strategic planning period is relatively high in relation to levels for similar countries: six to eight million dollars per year. Honduras is also eligible to compete for millennium account funds when they become available. At the currently anticipated funding level, the Assessment Team believes there should be no problem financing significant programs in all four areas recommended. There are two reasons for this. The first is that very significant levels of DG assistance (especially in the ROL and decentralization areas) are scheduled to be available from other donors, most notably the World Bank, the Inter-American Development Bank (IDB), Sweden, and the United Nations Development Program (UNDP). This will allow USAID to cooperate with those donors to ensure that components in each of the four program areas that the Mission believes are important are addressed. It will also limit USAID financing to interventions where the U.S. has a comparative advantage, or where an issue of particular importance to the U.S. government (USG) exists. The second reason funding should be sufficient is that many of the interventions recommended in the electoral reform area need not be costly since they consist of support for legal changes, policy reforms, and citizen awareness and advocacy.



## 1.0 INTRODUCTION

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### 1.1 Assessment Objectives

To contribute to the development of USAID/Honduras' strategic plan for the 2004-2009 period, a Democracy and Governance Assessment has just been completed. The information used in the assessment was gathered from interviews conducted during a three-week stay in Honduras in September 2002, and from readily available documents and published reports. Following the trip, the assessment report was drafted and discussed with the Mission, and it has now been finalized. The assessment had two objectives:

- To recommend areas in which to develop democracy and governance (DG) programs for the upcoming planning period, and
- To clarify the role of DG programs in USAID/Honduras' overall portfolio.

The DG Assessment Framework, developed by the Office of Democracy and Governance, calls for the following steps:

1. Analysis of the status of democracy and governance in the host country using five analytical "lenses" (consensus, rule of law [ROL], competition, inclusion and good governance) for the purpose of identifying the principal DG challenge(s) the country will face during the strategic planning period.
2. Consideration of the most important broad interest groups in society ("political actors") and the political and governmental "arenas" in which they operate for the purpose of understanding their relevance to the principal DG problem and identifying opportunities for democratic advancement and constraints to change.
3. Identification of DG program areas in which it is recommended that USAID design programs. The DG program areas are recommended taking into consideration the host country's DG needs and opportunities, along with other strategic considerations important to USAID. Following the assessment, it is expected that the USAID Mission will carry out the detailed sector analysis and consultation with prospective partners needed to select specific program activities and design program interventions.

The Assessment Team included Robert J. Asselin, Jr. (Team Leader, provided by ARD, Inc.), J. Michele Guttmann (ROL Specialist, provided by Management Systems International [MSI], Inc.), Eric Kite (Bureau for Democracy, Conflict and Humanitarian Assistance/ Office of Democracy and Governance [DCHA/DG]), and Leo Valladares (former Honduran Human Rights Ombudsman). The team collaborated with DG program offices of the Mission such as Municipal Development and Democratic Initiatives (MDDI) and Strategy and Program Support (SPS) in carrying out the assessment.

The Assessment Report is organized as follows:

- A brief review of historical facts follows below. An analysis of Honduras' current democratic status and its primary DG challenge is presented in Section 2.
- A discussion of the principal political actors in Honduras can be found in Section 3: political parties, civil society organizations (CSOs), mayors, and international community representatives.

- Four arenas of political activity are described in Section 4: the electoral arena, the national government arena, the legal arena, and the local government arena.
- Recommendations for USAID/Honduras regarding DG program strategy and programs are in Section 5.0.

## 1.2 Historical Background<sup>1</sup>

Honduras is a small Central American country about the size of the state of Louisiana, with two main cities—Tegucigalpa, the capital, and San Pedro Sula, the center of business activity—and a rural population that lives in relatively isolation due to the country's rugged topography. The population numbers six and a half million. Year 2001 per capita gross domestic product (GDP) (purchasing power parity) was \$2,600, indicating Honduras' place as one of the poorest countries in the Western Hemisphere, just barely ahead of Haiti and Nicaragua.

Honduras, along with the other Central American provinces, gained independence from Spain in 1821. Since then, it has suffered nearly 300 internal rebellions, civil wars, and changes of government—more than half occurring during the 20th century. Foreign capital, plantation life, and conservative politics held sway from the late 19th until the mid-20th century. Honduras has enjoyed stable democratic government only during the last 20 years. Its two traditional political parties (the Liberal Party [PL] and National Party [PN]) have played a key role in Honduran political life since their creation over a century ago, one that survived periods when the interests of local economic elites and important U.S. actors combined to favor military governments. The parties have been the primary vehicles used by citizens—mainly elites, but also significant worker and middle class groups—to serve their individual interests. During the last twenty years, the power exerted by Honduran elites through the two parties has been exercised behind the formal trappings of a democratic state. Elections have been regularly held. The basic democratic rights of most citizens have been formally recognized. Competition for power has been tolerated, both within and between the two traditional political parties. But Honduras' economic elites have continued to use the two parties to control both electoral processes and governmental organizations.

During the relatively stable years of the Great Depression, authoritarian General Tiburcio Carias Andino controlled Honduras. His ties to dictators in neighboring countries, and to U.S. banana companies, helped him maintain power until 1948. By then, provincial military leaders had begun to gain control of the two major parties. In October 1955, after two authoritarian administrations, young military reformists staged a palace coup that installed a provisional junta and paved the way for constituent assembly elections in 1957. This assembly appointed Dr. Ramon Villeda Morales as president, and transformed itself into a national legislature with a six-year term. The PL ruled from 1957 to 1963. At the same time, the military took its first steps to become independent of leadership from any one political party. In October 1963, conservative military officers preempted constitutional elections, deposed Villeda in a bloody coup, exiled PL members, and took control of the national police. The armed forces, led by General Lopez Arellano, governed until 1970. Following the 1969 border war with El Salvador, a civilian president—Ramon Cruz of the PN—took power in 1970. In December 1972, General Lopez staged another coup, and proceeded to adopt more progressive policies, including land reform, but his regime was brought down in the mid-1970s by corruption scandals.

The regimes of General Melgar Castro (1975-1978) and General Paz Garcia (1978-1983) largely built the current physical infrastructure and telecommunications systems of Honduras. Following the 1979

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<sup>1</sup> The following political and economic information draws heavily on Department of State Background Notes on Honduras (February 2002).

overthrow of Somoza in Nicaragua and the growing instability in El Salvador, the Honduran military accelerated plans to return the country to civilian rule. A constituent assembly was elected in April 1980, and general elections were held in November 1981. A new constitution was approved in 1982, and the PL president, Roberto Suazo Cordoba, took office following free and fair elections.

In November 1985, the PL claimed victory when its presidential candidates, who collectively received 42 percent of the vote, outpolled the PN candidate, Rafael Leonardo Callejas. Jose Azcona Hoyo assumed the presidency in January 1986. With the endorsement of the Honduran military, Azcona ushered in the first peaceful transfer of power between civilian presidents in more than 30 years. Four years later, Rafael Callejas won the presidential election, taking office in January 1990. Callejas focused his efforts on economic reforms, began to place the military under civilian control and laid the groundwork for the creation of the *Ministerio Publico* (MP, an independent agency similar to the Attorney General's office in the U.S.). Growing public dissatisfaction with the rising cost of living and widespread corruption led voters to elect PL candidate Carlos Roberto Reina in 1993. Reina clamped down on corruption, pursued those responsible for human rights abuses in the 1980s, established the MP and a civilian police force, and drastically reduced the size of the armed forces. By the end of the decade, civilian control over the military was firmly established.

Carlos Roberto Flores Facusse took office on January 27, 1998. Like three of his four predecessors, Flores was a member of the PL. In October 1998, Hurricane Mitch devastated Honduras, leaving more than 5,000 people dead and one and a half million displaced. Damages totaled nearly three billion dollars. At the insistence of international donors, the government of Honduras (GOH) agreed to administer the very significant amounts of external relief and reconstruction assistance provided with greater involvement of both Honduran civil society and donor organizations. As a result, civil society's role in Honduran political life increased dramatically, thus changing Honduran political life. Ricardo Maduro Joest of the PN was elected president on November 25, 2001, promising reduced crime and political reforms advocated by civil society.

During the last decade, Honduras became more urban, with significant growth in secondary cities as well as in Tegucigalpa and San Pedro Sula. Industrial and commercial activities gained importance as the economy opened up and agriculture stagnated. In 2001, 17.7 percent of GDP was accounted for by industry, compared with 11.9 percent for agriculture, 11 percent for commerce, and nine and a half percent for banking and finance. Government spending accounted for only 12.6 percent of GDP.

The Honduran maquila sector, the second largest in the world, provided employment for some 125,000 workers in 2000, and generating over \$528 million in foreign exchange. The U.S. economic slowdown beginning in 2001 resulted in cuts of some 25 percent in *maquila* jobs, but employment is now reported to have rebounded. Some 600,000 Hondurans now live abroad, mostly in the United States, and remittances from them have grown dramatically during the last two years. They are estimated to have reached almost \$500 million in 2001, or about one-twelfth the size of GDP.

U.S. influence in Honduras has always been important, starting in the 1900s when banana companies established vast plantations along the north coast, continuing during the 1980s when the U.S. government (USG) cooperated closely with Honduran military forces, and enduring as increasing numbers of Hondurans emigrate to the United States.

Following the last 20 years of democratic development, Hondurans have arrived at a point where opportunities exist to make their governmental institutions operate more democratically and more effectively to meet their country's needs. Whether they will take advantage of these opportunities successfully will depend not only on their own political will but also on assistance from the international community.

## 2.0 POLITICAL ANALYSIS

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### 2.1 Democratic Status

This section of the paper aims to analyze the status of Honduras' democracy for the purpose of identifying the principal challenge underlying future democratic development. This was done using a five-lens framework that parsimoniously examines some of the most crucial elements of democratic governance: consensus, inclusion, competition, ROL, and good governance.

#### 2.1.1 Consensus

*Is there a basic consensus on the fundamental rules of the game, and is the political contest played by those rules? Is there a basic agreement on who belongs in the polity and who does not?*

Honduras does not confront any significant consensus issues. It established formal democratic processes 22 years ago. In this time frame, marked by six presidential elections, Hondurans have undergone a cultural change: democracy, weak and flawed as it is, is the only political game in town. Among our interviewees there was unanimity that the military, long a principal player in Honduran politics and usually the most likely threat to formal democracy, has withdrawn from political life and that it is hard to imagine scenarios under which it would, or could, return to power. There are now less than 10,000 individuals serving in the armed forces, and the military budget totals only about \$43 million. A *ley organica* was passed in November 2001 that defines the role of the military in Honduras' democracy. President Maduro had no trouble replacing the whole command structure when he assumed office. Hondurans expect that elections will continue and that all parties will abide by the decisions made at the polls. There do not appear to be any significant threats to this consensus.

A sense of what it means to be "Honduran" in terms of a national ideology or belief system does not appear well developed, but there are certainly no strong competing national identities within the country's territory. Although there are minority groups in Honduras, accounting for approximately 10 percent of the population, there is no question among these minorities or the majority population that they all collectively belong in the same country. The largest indigenous groups are the Lencas (90,000), Chortis (3,500), Tolupanes (10,000), Misquitos (35,000), Pech (1,600), and Tawahkas (300). In addition, there are approximately 90,000 Garífuna, who are the descendants of shipwrecked slaves who mixed with the Carib and Arawak Indians in St. Vincent and were deported by the British to the Caribbean coast of Central America in 1797. Immigrant communities are also present, with Christian Palestinians and Chinese being among the most important groups. They too consider themselves Honduran.

#### 2.1.2 Inclusion

*Are there problems of inclusion and exclusion? Are parts of the population formally excluded and disenfranchised from meaningful political, social, or economic participation? Is participation high or low?*

Honduras is a relatively inclusive county compared with neighbors like Guatemala. Several factors have shaped this development. First, social mobility is possible in Honduras. Hondurans can and do rise from humble backgrounds to positions of influence in society, usually thanks to talent, education, and/or political party/business success. This may be partially due to the country's relative homogeneity and the fact that wealth disparity, while significant, has been less pronounced than in other countries in the region. Second, Honduras has been described as a corporatist state (albeit on a shoestring budget), where

citizens at all levels have access to organizations of mutual interest. Historically, unions, political parties, and the military have been avenues for upward mobility that have helped to maintain Honduras' social peace.

Although unions are not as influential as they once were, Honduras still has the strongest labor and *campesino* movement in Central America, dating back to the 1930s, with formal legal recognition of collective bargaining dating to the 1950s. Honduras' early passage of agrarian reform laws and the free development of organized *campesino* movements are examples of their strength. Union members publicly discuss employment conditions, public employees in particular. Teachers, for example, have won significant concessions that the national government is struggling to meet. Nongovernmental organizations (NGOs) and civil society organizations were never strong in comparison, but have developed significantly in the past few years, particularly since Hurricane Mitch, to the point where they are more powerful now than unions and *campesino* organizations. A number of interviewees indicated that citizen participation at the local level has begun to increase in recent years.

Unlike some other countries in Latin America, there are no significant structural barriers to voting, such as insufficient placement of polling places in rural areas or problems with voter registries. Voter participation rates are very high, usually above 70 percent. The two largest political parties are organized down to the neighborhood level, and as such are the principal social organizations in Honduras. However, democratic political participation through them is limited, as will be discussed below.

There are certainly areas for improvement under inclusion. Two areas are especially noteworthy: barriers to social advancement and economic development in rural areas, and the excluded status of women. First, many rural Hondurans (still the majority of the population) face barriers to educational and economic opportunities that residents of larger towns and cities do not. In many rural areas, only about six percent of the population attend school beyond the sixth grade. Primary school completion rates are far higher in urban than in rural areas of Honduras. Economic opportunities are likewise more plentiful in urban areas. State-provided social services are not as accessible for rural Hondurans.

As in many other countries, women in Honduras have historically been the most impoverished and the least powerful members of society, both at a personal individual level and in their ability to influence politics or shape policies that govern their lives. Moreover, they have the least access—as a matter of both law and practice—to enforcement and protection of legal rights. In Honduras, these issues are compounded by the overlays of extreme poverty, a highly *machista* culture, and indigenous traditions of *caciquismo*, and have combined to create enormous personal hardships, including ubiquitous domestic violence.

Women in Honduras suffer disproportionately from economic deprivation, legal and political inequality, and social inequities and discrimination. Not surprisingly, the differences are more dramatic in rural areas, where women's lives are too frequently characterized by domestic violence, sexual abuse, geographic isolation, low wages or unemployment, low educational levels and high rates of illiteracy, high birth rates and domestic abandonment, inadequate healthcare, housing shortages, alcoholism, and lack of legal authority or protection. These women have few options, little choice, and virtually no voice. Financial dependence, fear of reprisal and retaliation, and inadequate or absent law enforcement discourages reporting of even the most egregious criminal violations.

In recent years, Honduras has passed a handful of national laws and has ratified international treaties promoting equal treatment of women, but has not gone far in their enforcement. These include the Anti-Domestic Violence Act and the Equal Opportunities for Women Act. Some modest improvements have resulted, but little demonstrable significant progress is evident. Recently, the National Human Rights Commission began a National Program for Women's Rights in an effort to compel compliance with

national and international laws and treaty obligations in the areas of discrimination, violence, health, sexual and reproductive health, political participation, employment, education, and economic rights.

Political participation of women is low despite several noteworthy pockets of leadership and representation, such as the current Supreme Court panel and several ministers and congresswomen. More often than not, their presence comes as a result of political or economic ties that have facilitated access, and not from any intent to include women per se into the realms of power. In other words, these women have attained their status or positions despite their gender. Decision making in Honduras is accomplished only through political party filters, which are highly discriminatory. Currently, only eight of the 128 *diputados* and 20 of their 128 *suplentes* (designated congressional substitutes) are women. More women have been able to attain strong roles in private enterprise and business than in politics. A recently enacted quota law requiring 30 percent of political *cargos* (positions) to be held by women was uniformly characterized as a “complete joke:” female candidates are merely tacked onto the ends of the party slates published prior to the elections, and it unclear whether the 30 percent requirement is ever met. In any event, the parties notoriously alter those lists through the date of the election, and even afterwards. Prior to the enactment of the quota law, the percentage of women in congress had peaked at 10 percent; since then, it has declined. Although the Maduro administration had promised to elevate women’s equality issues to the status of national policy, little action has been taken toward that end. To the contrary, we were told that acceptance and tolerance of the low levels of women’s participation in government has, paradoxically, increased. A National Women’s Institute established in 1999 as a separate ministry (although not a cabinet-level position) to address gender issues is widely perceived as ineffective, inefficient, and politically partisan; it has failed to garner much respect or credibility.

### 2.1.3 Competition

*Is there competition in the system? Elections are one form of competition, but not the only one. Is there a competition of ideas, of social actors, a free media, and a vibrant civil society? Is a healthy set of checks and balances present in government?*

Just as all roads lead to Rome, in Honduras nearly all democracy problems trace their origin back to a concentration of political and economic power in a small elite. As one observer wrote, “There exists in Honduras a seamless web of elite power, in which state institutions, enterprises, the press and political parties are used together to advance the interest of the few.”<sup>2</sup> The political parties are the primary tools of elite control. Elections are free and fair, but occur between two principal political parties that are beholden to the interests of individuals from the same economic elite, making them virtually identical in their ideological outlook. In addition, both parties have, until recently, shared an aversion towards those favoring changes in Honduran political practices. As one of our interviewees stated (more or less), “The political parties aren’t in opposition to each other, but jointly against civil society and the intelligentsia who recognize the problem.” The result has been a fundamental lack of a level playing field for the competition of ideas, interests, and values among all Hondurans, leading to poor governance, corruption, absence of the ROL, low levels of social welfare, and stagnant economic growth. Because this political system is no longer able to meet the needs of the country, tolerance with the concentration of power is beginning to wane.

The form of the ballot for the election of deputies to Congress—a department-level party list that does not include candidate names—has two implications in terms of competition. First, the lists are under the control of the party bosses and are frequently changed, even after elections. It is common knowledge in Honduras that deputy slots are purchased from the parties with major campaign contributions. A deputy

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<sup>2</sup> Margaret Sarles in 2001 report to USAID Mission.

position is a tangible good in Honduras, since it includes blanket immunity from both criminal and civil prosecution. Secondly, there is relatively little competition of ideas within parties. Deputy candidates are beholden to party leadership and not to the electorate. One interviewee stated, “The whole political system needs to be turned on its head.” The direction of accountability within the Congress is upward to the party bosses (and their elite partners), rather than downward toward the electorate. Deputies who want a political career (or want to keep their immunity) do not deviate from the party line. Several Hondurans stated that political parties in Honduras are best understood as corporations under a Chief Executive Officer and not as channels for the aggregation of citizen interests. Even when a party is in the opposition, the money running through the party “corporation” flows from a few elite holding companies and banks (the national treasury helps to finance the party in power). The result is a system that is isolated and insulated from the interests of the electorate. Honduras is a captured state in the hands of the economically powerful.

That said, reforms in recent years have separated a single party ballot into three: one for direct election of mayors, one for congressional deputies, and one for president. This change has resulted in greater accountability of mayors to citizens, and recently, more split votes. This is significant since, as one of our interviewees stated, “It is easier to change one’s religion in Honduras than to change one’s political party.” As a group, mayors are the most trusted government officials in Honduras. The credibility of the mayors and municipalities, with its roots in direct election and citizen accountability, has proven a counterweight to strong central power. The separation of the ballot also has a salubrious affect on the checks and balances between the legislative and executive branches of government. For the first time ever, the current presidential party had to form a voting coalition with a minority party to obtain a slim congressional majority. There are indications that a healthier check of executive power by the legislature may develop. The same cannot be said of the judiciary. Judicial independence may begin to improve with the implementation of new appointment procedures for the Supreme Court and the separation of court terms from that of the president and Congress, but a culture of independence has yet to develop.

As described previously, there are a wide variety of groups and organized interests in Honduras. New civil society actors are increasingly exerting political pressure, particularly since the mobilization following Hurricane Mitch. Business organizations are both numerous and vibrant, but modern business practices and market support mechanisms such as capital markets are years away. Political/economic elites own and exercise a significant degree of control over the Honduran news media by omitting coverage or using media outlets to serve their own and allies’ interests. Many journalists are also subject to corruption and accept payments to “spin” stories. The last president continued to actively control one of the nation’s largest papers while in office.

## 2.1.4 Rule of Law

*Is there ordered liberty? Is politics, indeed are life, liberty, and property, bound by a rule of law?*

The justice sector in Honduras—as in most Latin American countries subjected to long periods of authoritarian rule—has for many years operated poorly and failed to earn the respect or confidence of Honduran citizens. The Honduran bench has a long tradition of political patronage and subjugation to the regime in power; every change in government has been accompanied by substantial turnover of judges and judicial personnel. The justice sector in general suffers from high levels of corruption and low ethical standards and practices. Arbitrary decisions are made, and manipulation of the courts by other governmental branches, the economic elite, privileged classes, special interest groups, and other well-financed groups or individuals occurs regularly, while the poor and powerless have no effective defense or recourse. The law has been used as a tool to protect the powerful at the expense of the most vulnerable and defenseless populations, thus maintaining and reinforcing dramatic socioeconomic inequities. A

prominent Honduran businessman, upon meeting the former U.S. ambassador for the first time, is widely reported to have boasted that he “owned” the Supreme Court.

In addition to this crippling lack of independence, the justice system has been handicapped by archaic procedural codes, inadequate training and preparation for justice system operators, weak administrative capacity, insufficient budgets, and minimal public credibility.

The same institutional weakness in the face of elite manipulation has rendered personal property rights tenuous, discouraging domestic and international investment. For example, municipalities are unable to accurately assess and levy property taxes in part because cadastres are in such disarray. Wealthier Hondurans are able to negotiate their way to secure land titles; at present, title is allegedly held to lands in excess of 100 percent of the total national territory. Recent efforts to attract investments to Honduras have been undermined by the inadequacy of the legal system in general, coupled with a rising crime rate fueled by economic woes. The legal system has been unable to confront rampant corruption in the public sector or to control widespread crime and impunity that threaten public security throughout the country. In the light of growing public pressure to combat crime and President Maduro’s “zero tolerance” policy, there are increasing concerns that human rights are being abused by both private actors and public authorities in the name of fighting crime. Citizens who justifiably have little faith in the criminal justice system, and often distrust or fear the police, frequently take the law into their own hands. Vast stretches of rural Honduras are, in effect, lawless.

Notwithstanding the numerous failures of the ROL in Honduras, the news is not all bleak. Important and potentially groundbreaking legal reforms have recently been passed and are in the early stages of implementation. Under consistent pressure from the international donor community (USAID in particular) and an increasingly active civil society, two principal reforms have become effective this year:

1. a new Criminal Procedures Code (CPC) that incorporates guarantees of individual rights, freedom from arbitrary or lengthy detentions, oral and public hearings, transparency, and other fundamental elements of due process; and
2. a constitutional amendment establishing mechanisms to depoliticize the judicial branch and increase its independence from the executive by separating the appointment of Supreme Court justices (magistrates) from the regular election cycle, and setting in place a new, more transparent and open selection process for that court.

Although these gains are incomplete and as yet insecure, they clearly represent enormous positive strides. Political will for further reform is gaining ground and momentum.

Over the past 10 to 15 years, the justice system has increasingly become a central issue of public concern and dissatisfaction. More recently, it has become a focal point for development. In the course of this assessment, establishment of a credible and reliable ROL was repeatedly cited as one of the most urgent, necessary development goals; a transparent and reliable legal system is widely considered as essential to ensure public security, attract investment, and stimulate economic growth.

### 2.1.5 Good Governance

*Good governance refers to more than government itself. It refers to the way in which social institutions, both in the public and private sectors, actually work. Is there good governance, or at least the capacity for good governance-not only by the state but also by social institutions in general?*



Honduras has never had a strong state. Even today, the rugged, rural nature of the country presents serious impediments to the extension of the state's authority and services. There are numerous communities that cannot be reached by road, and many are without police. But the principal reason for poor democratic governance and poor governmental performance is that those controlling Honduras' two principal political parties have succeeded in putting in place a political system that allows them to use governmental authorities to benefit themselves and their allies. The latter is accomplished with political patronage jobs at all levels of government<sup>3</sup> and with governmental decisions favoring interest groups and individuals with party ties or the willingness to make deals with those in power. Thus, the parties have little appetite for the idea that institutional checks and balances within government should be exercised by the courts and statutorily independent bodies. They are not interested in helping construct a more level playing field where citizens would be able to participate more fully in public life. Oversight bodies, such as the Electoral Tribunal and Controller General (CG) are dominated by partisan politics. Corruption, with its deep roots in the lack of accountability of the political class to the larger public interest, is endemic. Honduras scores consistently very near the bottom among Latin American countries on the Transparency International corruption perception index.

Deep politicization of every aspect of government is at the core of the problem of poor governmental performance in providing social services and a stable environment for economic growth. Honduras has a very weak civil service and, with each election, turnover in government ministries is significant. Positions up and down the line are filled with political partisans, leading to a significant learning curve with each new administration and poor organizational efficiency. Drains on governmental efficiency are especially important in Honduras, where, because of early political jockeying within the political parties to be the next presidential nominee, any president really only has about half of a four-year term before becoming a lame duck.

Through entirely legal means, government largess is funneled to political allies. Mayors from the ruling party can count on extra infrastructure projects. Public resources are used to bail out allied banks with bad debt, thereby encouraging more bad investments and driving up the cost of credit to a point that cripples the economy. Big business investors in the political party receive tax abatements that the treasury can ill afford, as taxes collected are estimated to amount to only 12 percent of GDP in Honduras. The World Bank has estimated that any state (even an efficient one) is reduced to being ungovernable at any rate below 10 percent. Honduras can scarcely afford politically motivated bank bailouts and tax abatements.

One other piece of the governance picture is important. As noted above, Honduras' ruling class has been more willing than most in Central America to allow some level of incremental reform to keep social tensions in check. The political parties, seeking voter support, promise wide-ranging social programs during elections, some of which are enacted. The result, over time, has been the development of a social democratic state with inadequate resources. The government consistently struggles to meet its obligations to unions, pensioners, and the unemployed. The current political system constrains economic growth, leaving fewer and fewer resources available for social programs. Several sources suggested that the gap between what politicians promise and what government can actually provide is creating a credibility problem that could provide fertile ground for more extreme forms of political populism.

## **2.2 Honduras' Principal Underlying Democracy and Governance (DG) Challenge**

The most dominant feature of the Honduran polity has always been the concentration of political and economic power among members of a small elite. What distinguishes Honduras at this point in its history

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<sup>3</sup> This is openly acknowledged. For instance, when the Chief Justice of the Supreme Court passed away last year, a PL party leader competing for his party's presidential nomination said on television that he had been planning to name the deceased as President of Congress if he was elected president of the Republic.

from other countries with the same problem is that the concentration of power occurs behind the formal trappings of a democratic state. This is not to deny that Honduras is a democracy—it is. But the institutionalized concentration of power among the economic elites who control political parties—and through them, almost all governmental institutions—prevents Honduras’ democracy from serving the interests of all Honduran citizens as well as it should, and stifles both political and economic development.

Economic elites in control of the two parties use their power to control electoral processes and the operations of Honduran governmental entities in the executive, legislative, and judicial branches. The parties function for their members just like corporations function for their owners.<sup>4</sup> The electoral system ensures that congressional deputies are accountable to party bosses, and not to the citizens in the districts they nominally represent. The party occupying the presidency traditionally staffs all government ministries and offices with the party faithful, and ensures that those organizations operate in accordance with party wishes, irrespective of their institutional mandates and legal responsibilities. The operations of the courts and law enforcement organizations (public ministry, police), and those of other formally independent governmental bodies (CG, *Tribunal Nacional de Elecciones* [TNE]<sup>5</sup>), are routinely interfered with to serve party interests, either through the formally installed party representatives who govern them, as in the case of the TNE, or informally, through corrupt maneuvers and intimidation. Finally, immunity is automatically accorded to all elected officials. It provides protection from prosecution for all actions taken, whether in official or personal capacity, before or after being elected.

It needs to be clearly understood that the power of the elites and their political parties is not absolute by any means. Other power centers exist in Honduran society, such as unions and *campesino* organizations, business associations, the Church, universities, and, more recently, NGOs and mayors. Given the dominant position of the parties, however, these other groups have traditionally advanced their interests in direct negotiations with the elected party in power rather than through democratic institutions of government functioning to act in the public interest. The obvious reason is that Honduras’ governmental organizations do not function that way.

Honduras’ system of governance has worked-up to a point. Honduras enjoys a relatively high degree of social capital. Negotiations carried out between the parties in power and other interest groups have led to agreements that obtained benefits for both sides, and even helped improve social welfare (e.g., the labor code and agrarian reform) and avoided the social unrest suffered by Honduras’ neighbors. But in this sort of political system, there is little or no opportunity for groups that do not enjoy the favor of those in power to pursue their interests or protect their rights. There is not enough room for the shared public interest in good governance, sustained economic growth, and justice to be served.

It is now becoming clear to more and more Hondurans that practicing politics as usual will not help them face their society’s most important challenges: poor governmental performance providing services, bad economic policy decisions, misuse and waste of tax revenues, corruption, an uncompetitive investment environment, low growth, increased poverty, unreliable and inconsistent law enforcement, inadequate dispute resolution, poor public security, and human rights violations. None of these problems can be dealt with successfully without addressing the problem of the concentration of political and economic power.

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<sup>4</sup> Honduras presents an example of what USAID Administrator Natsios described as follows: “In many developing countries, the economic and political power are so entwined that oligarchies take control of the government, impose mercantilist or Marxist economic policies, and use political power to ensure themselves markets and suppress competition.” (Challenging Orthodoxy: Changing Perspectives on Development, October 21, 2002).

<sup>5</sup> The exception is the *Comisionado de Derechos Humanos*.

## 3.0 ACTORS

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This section reviews some of the principal political actors in Honduras—describing who they are, their interests, and their status regarding democratic development—for the purpose of identifying potential supporters and resisters of political change. Since the decisions of political actors are heavily influenced by circumstances in which they find themselves, the section begins by identifying existing external and internal pressures favoring positive political change.

### 3.1 Pressures for Political Reform

#### 3.1.1 External Pressures

There are significant external and internal pressures to change the ways in which Honduras' political system currently operates. The most significant external pressure for change arises from Honduras' lack of competitiveness in an increasingly global world economy. Business conditions in Honduras are not good. New investment is skewed in favor of commerce (e.g., restaurant franchises that enjoy significant tax advantages) and *maquilas* that face increased competition for access to U.S. markets. Honduras' financial sector does not serve private sector needs and misallocates national savings. GOH agricultural and industrial decision making is haphazard and lacks any policy focus. Businesses cannot depend on a reliable and consistent judicial system to protect property rights and help resolve ordinary commercial disputes. Public services are costly and ineffective. Honduran workers can be as productive as those in neighboring countries, but they need better basic education and skills to do so. In this uncertain business environment, many opportunities for investment and growth in areas in which Honduras may have legitimate comparative advantages are lost.<sup>6</sup> Most Hondurans appear to fear the prospect of more open markets rather than welcome the opportunities they can bring.

The main constraint to increased trade and investment is political: traditional business elites and their political allies in the two main parties make decisions on the basis of personal gain and advantages for party members, with little concern for reforms to improve conditions for general business growth and social welfare. If Honduras is to move forward, reforms are needed to gradually widen political and economic decision making so that Honduran markets can operate more competitively.

Additional pressure for political reform derives from the increased attention to democratic governance and citizen participation given by the international donor community. Hondurans have always been very sensitive to their country's reputation in industrialized countries, and ready to respond to initiatives of the international community, and especially those of the U.S. They do so without complaining about interference by foreign governments in internal matters, and give the impression that to them the involvement of industrialized countries in Honduran life is natural. The most recent example of this occurred following Hurricane Mitch. Since the 1999 Stockholm Conference, where donors began to condition assistance more explicitly on better transparency, citizen participation, and improved governmental efficiency, Honduran political leaders and civil society have created "political space" for discussion and advocacy of governance reforms. Political leaders have learned to tolerate donor cooperation with civil society reformers.

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<sup>6</sup> At first glance, the fact that *maquilas* have prospered even in Honduras might seem to contradict this point, but as beneficial as those investments have been for investors and workers faced with few alternatives, they are precarious. This is because their existence does not depend on Honduran competitive advantage but on benefits accorded by U.S. trade legislation for which there is a lot of competition from other countries.

Another factor which accounts for such high tolerance of the involvement of industrialized countries in internal affairs is Honduras' continued heavy dependence on donor country financial flows to finance public investment and social programs.

Finally, some 600,000 Hondurans now reside in the U.S. where they enjoy greater economic opportunities and observe, or participate in, our democracy. They maintain contact with relatives and friends, and many travel home frequently, thereby exposing Hondurans to how our democracy and economy work.

### 3.1.2 Internal Pressures

Internal pressures for changing political practices have gained pace as more Hondurans realize that traditional practices are no longer allowing them to adequately address important societal concerns.

The Catholic Church has called for political and social policy reforms, and—under the leadership of the current Archbishop of Tegucigalpa, Cardinal Rodríguez—it has acted to ensure that politicians, the GOH, civil society, and donors have venues for discussing how needed reforms can be implemented.

There has been a sea of change in Honduran civil society over the last four years. Prior to Hurricane Mitch, NGOs seldom broached governance and political reform concerns in public, and very few civic organizations even existed. Now, public discussion and advocacy of political reforms by NGO leaders and intellectuals is common. Civil society actors and organizations are recognized political players, albeit as “outsiders,” but party leaders are listening to them more, and know the parties need to respond to the reform pressures they generate. Responsiveness to civil society concerns was an important element of President Maduro's election campaign, and led to a September 2001 pact among all presidential candidates to pursue specific political reforms.

Finally, the political parties themselves have begun to feel the pressures for reform. Two camps now coexist in the PN: the Maduro *técnicos*, many of whom are willing to consider new ways of “doing politics,” and traditionalists who are resisting change (so far successfully). The PL is divided into factions led by opposing leaders—all traditionalists—vying for power. The three minority parties are said to be the most reluctant to consider political reforms because they formed to compete on the basis of traditional political practices, not to reform them. Effective leadership for party reform from within the elites who control the parties has not emerged. Some speculate that it might come from young adults from elite families already active in politics, or from the ranks of mayors who have learned to respond to local voters' needs now that their election depends more on voters than party leaders. Others wonder if party leaders, mindful of Venezuela, might be moved to promote political reforms to prevent a populist option emerging in Honduras. While Honduras' political parties still hold most of the power cards, uncertainty regarding their long-term future is high.

## 3.2 Political Parties

Honduras' two major political *movimientos*—the Liberal Party (PL) and National Party (PN)—have roots going back well over a century. Three other parties exist—the Christian Democrats, the Democratic Union Party, and the National Innovation and Social Unity Party—but they have never played a role similar to that of Honduras' two traditional parties, who are vehicles for exercising elite power and “owners of the state.” Honduras has not yet established democratic institutions of government that its citizens can use to practice participatory governance, guarantee the ROL, and provide for general socioeconomic welfare. Instead, economic elites use the two traditional parties to control the state, and have done so with the consent of the majority of Honduras' citizens.

Political party identification runs deep in Honduran society, with families clearly associated with one or the other of the two main parties. While the degree of party identification is beginning to lessen with the advent of separate ballots for congressional deputies and municipal officials, its pull remains strong in presidential elections. The three minority parties have never gained a foothold in presidential and municipal elections. In Congress, they typically have allied in voting blocs with one of the two major parties.<sup>7</sup>

Competition exists within the two major parties, but it has expressed itself differently in each as regards the presidency. The PL has traditionally held internal elections among party leaders, whereas within the PN, presidential candidates have been selected by party leaders. At the level of congressional deputies, the bargain made by aspiring candidates is the same in both parties. While there are many public-minded deputies, constituent service is not the trait that parties look for in selecting their candidates. If there is a typical deputy, it is someone who has been active in the party and has made himself (there are only eight female deputies, despite the 30 percent quota law) known to the party leadership, probably through campaign activities for the party presidential candidate. More important, as one interviewee put it, is “what the person brings to the party.” This is measured mostly by the size of one’s contribution to party coffers, but can also include effective control of voters (often the case for regional leaders) or connections with interest groups. In return, deputies obtain access to the levers of governmental power for personal enrichment and/or to favor supporters and allies—and they gain civil and criminal immunity. According to several sources, it is not uncommon for deputies to leave office with considerably more wealth than when they entered.<sup>8</sup>

The issue of immunity deserves special emphasis. It covers liability for acts carried out in one’s official capacity as well as in one’s personal life, and the immunity while in office extends to actions taken before being elected or appointed. As a result, deputy candidate positions are for sale, with the highest bidders receiving preferential placement on ballots. (Higher placement often guarantees election under Honduras’ proportionality rules.) So one of the primary attractions for the elite themselves to hold office—a number of the wealthiest individuals in Honduras are in congress—is the blanket civil and criminal immunity from prosecution that high office conveys. Immunity creates a perverse incentive for corruption that Honduras can ill afford.

### 3.3 Civil Society

Honduran civil society includes a wide variety of nonprofit organizations and citizen groups that can be divided into three groups:

1. unions, *campesino* organizations and cooperatives;
2. business associations; and
3. NGOs, CSOs, grass roots, and indigenous organizations.

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<sup>7</sup> In the 2001 elections, the three minority parties obtained a total of 3.5 percent of the presidential vote, and 7.2 percent of the municipal-level vote, but failed to get close to capturing any municipality. The total percentage of votes they obtained for congressional deputies was 12.8 percent, enough to bring about the result that the party winning the presidency, the PN, obtained only a plurality (46.4 percent) rather than a majority in congress. This was the first time that occurred in Honduran history. To form a congressional majority, the PN formed a coalition with the Christian Democrat Party (3.7 percent and four deputies) to arrive at a total of 65 out of 128 deputies.

<sup>8</sup> One businessman joked with the team that “The problem in Honduras is that it works the opposite of the USA. Here, people enter politics to get into ‘business’ and get rich, rather than get rich in business and then enter politics!”

The way the political game is played in Honduras is changing due to the emergence of new civil society actors. NGOs, CSOs and other citizen-based organizations in the last group—along with civic leaders not holding elected office, and a small number of social commentators and university professors—began to get more active in public policy debates and political reform issues following Hurricane Mitch, when donors insisted on the need for more citizen participation. These organizations and actors often refer to themselves as “new” civil society to distinguish themselves from unions and business associations that employ traditional political lobbying practices to obtain benefits for their members.

Two other social actors also play a strong role in Honduran civic life: the media and the Catholic Church. Media outlets have always operated under the control of families with business interests, and consequently political agendas to pursue with party officials and elected leaders, but those families have begun to exert their ownership power differently with the emergence of new civil society actors and some advocacy by journalists for freedom of the press. As in other Latin American countries, the Honduran Catholic Church has become a more forceful advocate for human rights, democratic government, and social responsibility.

### 3.3.1 Unions, *Campesino* Organizations and Cooperatives

Three labor confederations exist: *Confederación de Trabajadores de Honduras* (CTH), affiliated with the International Federation of Free Trade Unions; the *Confederación General de Trabajadores* (CGT), affiliated with the Christian Democrats; and the *Confederación Unitaria de Trabajadores de Honduras* (CUTH). Over the years, these confederations have expanded to include farmer cooperatives and town councils (*patronatos*). Naturally, their primary concern has been to obtain benefits from the state and employers for their members, which they have pursued in direct negotiations. They succeeded in obtaining recognition of important rights and benefits for Honduran workers, ones that have had a very positive impact on Honduran society itself in terms of equity and social tolerance. At the national level, their political stance has always been anti-capitalist to varying degrees (or at least anti the crony capitalism that characterized Latin American/Caribbean [LAC] economies in earlier times). With the fall of communism and rise of globalization, both the economic and political environment in which they operate has changed (more nonunionized employment, especially with the growth of *maquilas*; universal commitment to democratic government, and emergence of new civil society actors not focused on the class struggle between labor and business owners). The Honduran union movement has not adapted to these changes, and as a result has diminished in importance within Honduran civil society and political life.

Farmer cooperatives began to form in the 1950s. Today there are 1,800 cooperatives organized into 12 federations and a national confederation. *Campesino* organizations formed mostly in the 1970s when the Honduran agrarian reform was implemented, and are organized into the *Consejo Coordinador de Organizaciones Campesinas de Honduras* (COCOCH). The political role of these organizations has been limited to lobbying for the interests of their members.

### 3.3.2 Business Associations

As in other LAC countries, Honduran business owners formed associations many years ago to lobby government collectively. This complemented the individual lobbying done by business owners with, or within, the two traditional political parties. The national *cúpula* business association is the *Consejo Hondureña de la Empresa Privada* (COHEP), which includes 51 business and professional associations. Professional associations (for lawyers, journalist, etc.) function mainly as unions for their members and lobby government on their behalf. The most important business association in the country is the *Camara de Comercio de Industrias de Cortes* which includes all important businesses operating in the San Pedro

Sula Valley.<sup>9</sup> When the Honduran economy was not as open as it now is, business associations helped maintain protection from competition, government subsidies, and other measures of benefit to business owners. This is still the most important function they serve, but as the economy opened, they developed other services for their members. In addition, as new businesses emerged that did not depend on government protection for their survival and competed with imports and in international markets, the interest of some important Honduran business owners in sound economic and social policies and good governance to improve their competitive positions became more evident. Many such business owners belong to the *Asociación Nacional de Industrias* (ANDI), which is distinguishing itself from other business associations by becoming active in promoting change in these areas, often in cooperation with other CSOs.

### 3.3.3 “New” Civil Society Actors

The Swedish International Development Agency and the Inter-American Development Bank (IDB) collaborated with numerous Honduran CSOs earlier this year to produce the *Mapeo y Caracterización de la Sociedad Civil en Honduras*, released April 1, 2002. That study divides civil society actors included in this category into six groups:

1. base/community groups;
2. church-affiliated organizations;
3. CSOs involved in defending and broadening rights (political rights, human rights, minority rights, etc.);
4. organizations involved in promoting arts, culture, and sports;
5. social welfare service organizations; and
6. NGOs devoted to democratic development, citizen participation, and economic development.

As can be seen, this population of organizations is wider than that including only “new” CSOs focused on citizen participation and democratic development, most of whose members would put themselves in the third and sixth groups. Prior to Hurricane Mitch, very few such organizations existed. One of the first was the *Fundación Desarrollo y Democracia de Honduras* (FDDH), a former USAID grantee.

Since Hurricane Mitch—and the GOH’s resulting commitment to work closely with civil society in reconstruction activities, as well as continued encouragement from international donors and the Church—the number and range of activity of such organizations has increased dramatically. It is difficult to generalize about the interests of the leaders of these organizations because they are a new phenomenon in Honduras and their roles and methods of operating are still developing. In the best of cases, new CSOs operate in the interest of Honduran society as a whole, or for their members (e.g., indigenous organizations) within that context. In some cases, however, they serve the personal or political interest of those leading or funding them (including international donors). Up to now, as a group, the “new” CSOs have focused on “giving voice” to societal and democratic development concerns, through studies, public statements, press releases, and cooperation with officials such as the National Human Rights Ombudsman. Traditional politicians feel threatened by this, and some have reacted negatively, not hesitating to question the legitimacy of CSOs “representing” citizens. For their part, leaders of “new” CSOs now speak openly about the need to move from “protests” to “proposals,” and discussions about the proper role of such organizations are now common.

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<sup>9</sup> FOCACH, the Honduran Federation of Savings and Loan Cooperatives, is an organization that is a member of COHEP and also a cooperative federation. It is in favor of open market competition and democratic governance, and is familiar with USAID from having participated in housing guarantee programs.

### 3.3.4 Media

There are four national coverage newspapers published in Honduras: *La Prensa* (circ. 45,000), *La Tribuna* (circ. 35,000), *El Heraldo* (circ. 30,000), and *El Tiempo* (circ. 25,000). It is estimated that an average of five individuals read each copy, so national readership is about 775,000. The two main radio stations are Radio America and Radio HRN, the only ones with national reach. Many others with very small listening radii operate. A number of television channels operate, including the *Televiscentro Corporation* which operates channels 3,5, and 7 with national coverage. Other channels are *9/Vica Noticias*, channel 11, channel 13 and channel 63/*Telenisa*.

Ownership of these media properties is concentrated as follows:

- Jorge Canajauati (businessman who has cooperated with both parties), *La Prensa* and *El Heraldo*;
- Jaime Rosenthal (three-time PL candidate for president), *El Tiempo* and Canal 11;
- Carlos Roberto Flores (ex-President, PL), *La Tribuna*;
- Rafael Ferrari (PL businessman), *Televiscentro* (and part-owner of Radio HRN);
- Miguel Andonie Fernández (pharmacologist said to favor press freedom), Radio America; and
- Manuel Villeda Toledo, Radio HRN;

It is commonly believed that those owning the media outlets, especially newspapers, use them to pursue their own business and political interests. The GOH also exercises great influence over the media, especially newspapers, because of the importance of government advertising to their profitability (and more generally, the importance of government decisions to the success of businesses owned by those who control the newspapers). Presidents have not hesitated to withdraw government advertisements from offending media. In addition, there are legal impediments to press freedom. Among them is Article 345 of the Criminal Procedures Code (CPC) which provides for two to four years prison for those found guilty of “threats, calumny, insults, or other offenses against the dignity of public authorities exercising their public duties.” A final challenge to press freedom is the practice of paying journalists for stories, said to be relatively common.

Despite these problems, Honduran citizens can rely on the media to provide them with a relatively good amount of information on issues and happenings of public interest, thus serving democracy better than might be thought—although the depth of information presented and the professionalism of journalistic methods are often problematic. Positive influences include competition among media outlets, the fact that providing news on issues of public concern is often in the personal interest of media owners, and the attitude of many journalists.

Over the last two years, journalists have been very active, in cooperation with other civil society actors, in promoting greater freedom of the press. A split has emerged among journalists belonging to the *Colegio de Periodistas Hondureños* between those who cooperate within the system and those trying to change it. Recently, progressive journalists formed the *Comité por la Libertad de Expresión* (Clibre), a group cooperating with *Probidad* to strengthen corruption-monitoring and defense of press freedom. The journalists active in creating Clibre were instrumental in organizing the “First National Dialog on the Right to Information and Liberty of Expression” in June 2001. On April 26, 2001, they issued an open letter to media owners on to remind them of the social responsibility of the press, resulting in a very negative response from the *Asociación de Medios de Comunicación*. In September 2001, the *Centro de Documentación de Honduras* (CEDOH) published “*Honduras: Prensa, Poder y Democracia*,” presenting a full discussion on the role of the press in Honduras’ democracy.<sup>10</sup> In January 2002, the National Human

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<sup>10</sup> Second edition published January 2002.



Rights Ombudsman issued “*El Primer Informe sobre el Derecho a la Información y la Libertad de Expresión en Honduras*.” Clibre received support from *Radio Progreso* and the Honduran Jesuit community to hold a regional forum on freedom of the press in San Pedro Sula in June 2002, and later held a similar event in Olancho.

### 3.3.5 The Catholic Church

The Church, especially in the person of Cardinal Oscar Andrés Rodríguez, is very active in Honduran democratic life. The cardinal and the Episcopal Conference (made up of Honduras’ seven bishops) regularly issues statements on social welfare responsibilities, human rights, and democratic development. In addition, the cardinal is often asked to preside in forums where civil society actors, government officials, and sometimes donor country representatives, discuss public policies.

Three challenges face Honduran civil society as a whole. First, as civil society expands and changes, leaders of the various types of CSOs are trying to define the role of their organizations in Honduras’ democracy. For traditional CSOs in the first two groups cited above, the issue is whether they should continue to operate with an exclusive focus on members’ interests rather than a primary focus on their interests pursued within a more pluralistic democracy where public policy decisions are not just made in closed-door negotiations. Newer CSOs are considering two issues: their legitimacy, and distinguishing their role from that of elected leaders. A minority of organizations argues that they should “co-govern” with elected authorities. Others believe their role is to articulate citizens’ interests and promote citizen participation. How CSOs should work within forums<sup>11</sup> established by elected officials to collaborate with civil society is also a topic of discussion.

The legitimacy issue is often brought up by elected officials: who’s interests do CSOs represent? In order to claim that they represent the general public or specific segments of society, CSO leaders need to be able to demonstrate that the ideas and positions they espouse come from, or are shared by, those they claim to represent. This brings up questions regarding lines of communication, decision-making processes within CSOs, CSO financing, and transparency in identifying real or potential conflicts of interest involving CSO principals and donors.

The second challenge for Honduran civil society is also related to the role of CSOs vis-à-vis citizens. Developing the capacity to make policy proposals, as CSO leaders are now saying they need to do, will require three things: a more informed and engaged citizenry (with improved democratic habits), reliable communication channels between CSOs and citizens, and better CSO advocacy skills. One issue for individual CSOs to consider is the extent to which they should get involved in civic education activities or the facilitation of principled dialog among citizens with differing interests. Another is better cooperation with, and use of, the Honduran media outlets.

Finally, many CSOs now see the utility of better communication between the various types of CSOs cited above, and some are considering possibilities for joining forces from time to time to deal with issues in which they share interests.

## 3.4 Mayors and the Honduran Association of Municipalities (AMHON)

In 1993, the laws governing municipal elections were changed to provide for the direct election of mayors by the use of separate ballots; historically, mayors had been political appointments. Since the

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<sup>11</sup> At the national level, *Foro Nacional de Convergencia* (FONAC) is the most prominent.

introduction of direct elections, mayors have become more important political actors in Honduras. Mayoral primaries held within political parties are becoming increasingly competitive, and some mayors are beginning to make their way into national politics. The caliber of mayoral candidates in general has noticeably improved over the past years, probably as a result of splitting the ballots. Election of mayors by separate ballot has likewise compelled local governments to become more representative of and responsive to citizens, especially in the provision of basic services. Local voters are more often selecting mayors based on their individual traits as candidates, and not simply because of their party affiliation. This has become evident through the proliferation of local-level elections that no longer mirror national election results. As a result of these changes, mayors have begun to develop constituency relationships with the citizens and potential voters who reside in their municipalities; this cultivation of constituencies distinguishes these local-level politicians from national-level politicians whose loyalty is directed towards party leaders and colleagues. Thus, the nature of the governance relationship between mayors and citizens is beginning to evolve more democratically.

AMHON has become the single most effective organization promoting the political interests of mayors and municipalities at the national level. AMHON existed on paper but had been inactive for 30 years when USAID sparked its resurgence and spurred it to become a key political actor. Without the efforts of AMHON, the Municipal Reform Law of 1990 (discussion, *infra*, at Section 4.4) would likely never have been implemented effectively, or would have been subjected to amendments eroding the grant of municipal authority. Through AMHON, mayors are now operating as an increasingly powerful independent bloc, without political alignment, on behalf of their municipalities; AMHON is one of the rare Honduran entities working across party lines. An affiliated organization—*Alianza Nacional de Mujeres Municipalistas de Honduras*—is comprised of female mayors, representing approximately nine percent of municipalities.

### 3.5 The International Community

The international community is a very important force in Honduran political life, much more influential and accepted by the local populace than in other countries. The U.S. is the most influential actor in that community, but others also became very important players in DG reforms during the 1990s once Central American hostilities had ceased. The influence and participation of the international community in democratic reform increased dramatically following Hurricane Mitch and coincided with the emergence of the new civil society actors mentioned above.

As in other LAC countries, the World Bank and the IDB are carrying out significant “reform of the state” programs at the national level. The UNDP has assumed a key role in facilitating discussion and negotiation of DG reforms between GOH officials and the donor community, as well as among various Honduran actors. It also is a channel for bilateral assistance from smaller European donors. Sweden has been an important player in the international community, cooperating with both the GOH and civil society. Its DG program totaled over \$20 million during the last three years.

## 4.0 ARENAS

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Four arenas of political activity are reviewed below for the purpose of identifying opportunities and constraints to be taken into consideration by USAID in deciding whether to provide DG assistance in those arenas. They are:

- The electoral arena,
- The national government,
- The legal arena, and
- The local government arena.

### 4.1 Electoral Arena

Honduras is governed under a constitution promulgated in 1982. It provides for direct election of the president to a single, four-year term in office. A single-chamber, 128-member Congress is elected on the same cycle, in proportion to votes received by each party, using department-level (18) party ballots that do not list candidates. Congressional deputies can be reelected, and there are no term limits. Finally, Hondurans elect mayors for 298 municipalities on a party ballot that includes the name of the candidate and the party list for municipal council.

The *Ley Electoral y de las Organizaciones Políticas* was issued on May 19, 1981, and has been amended nine times, the last amendment occurring in 1992. It established the *Tribunal Nacional de Elecciones* (TNE) as a national electoral regulatory entity, and spells out procedures for the formation and operation of political parties.

The national elections of November 25, 2001, were the sixth ones successfully carried out during the last 20 years under Honduras' current Constitution. Four presidential elections were won by the Liberal Party (PL), and two were won by the National Party (PN), in 1989 and 2001.

Political parties dominate the TNE and thereby effectively control electoral practices purportedly regulated by *Ley Electoral y de las Organizaciones Políticas*. As a result, elections are a power game among the elite rather than a vehicle for democratic selection of political leaders beholden to the electorate.

The TNE is composed of one member from each of the five political parties and a member from the Supreme Court. The Supreme Court member has always provided a second vote for the party holding the presidency, thus giving that party effective control.<sup>12</sup> In addition, the representatives appointed to the TNE from other parties have to be nominated by the *Ministro de Gobernación*, effectively giving the ruling party more negotiating authority over the composition of the TNE. Each member of the TNE exercises his/her authority according to party mandates. Together, the parties share an interest in ensuring that the TNE does not interfere with each party's freedom to manage its own affairs, and that campaign finance oversight is ineffective. As a result, in Honduras, the political party foxes guard the electoral hen house, with predictable results.

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<sup>12</sup> Following this year's selection of Supreme Court magistrates in accordance with a constitutional amendment, the Court signaled its intention to remove itself from the TNE. This would require amendment of the *Ley Electoral y de las Organizaciones Políticas*. Unfortunately, in the past, the Court has indicated that it was not competent to judge the legality of TNE actions. Whether it changes this position to exercise some check on TNE power will be important to watch.

The TNE has never consistently regulated electoral practices, nor has it developed standard procedures to apply in resolving electoral disputes. It has often gone beyond its legal authority as an investigative body, and made declarations regarding the legality of actions taken by other governmental bodies. The *Ley Electoral y de las Organizaciones Políticas* allows for independent candidates, but the TNE has always discouraged them. That law also sets limits on how parties finance campaigns, but the TNE does not insist that the parties submit financial reports to it. The electoral law puts the National Civil Registry (RNC) under the TNE, despite the fact that most of its functions have nothing to do with elections. This has subjected the RNC to political interference. All five parties share in staffing of the TNE. Since it and the RNC are the only governmental bodies the three minority parties can use for political patronage jobs, the three minority parties have been especially reluctant to participate in any TNE reform efforts.

Although politicization of the TNE has prevented it from exercising any control over the conduct of political parties, the election picture is not completely bleak. Since all the parties share an interest in preventing opposing parties from rigging elections, they have cooperated to ensure that elections are administered well. Honduras has an advanced automated voter registry and secure voter identification cards, and the TNE has significantly improved polling procedures.<sup>13</sup>

Political parties enjoy unfettered control over their party's ballots, which they use to determine who reaches office if their party is elected. Honduran voters elect parties, not individual party candidates. Until the mid-1990s, voters were presented with one ballot from each party. It was headed by the party's presidential candidate and included the names of those selected by the party for congressional deputy and municipal government offices. The order in which deputy positions appeared on the ballot was, and still is, important, because under Honduras' proportionality rules, the allocation of deputies elected from each department<sup>14</sup> is made according to the proportion of votes received by each party, starting at the top of each party's list of candidates.

Under current election law, when Hondurans go to the polls, they are presented with separate party ballots for president, congressional deputies, and mayor. The presidential and mayoral ballots carry the party insignia and a photograph. The congressional ballot includes only the party insignia and no photographs or names. While parties do advertise their lists prior to the election, citizens have no way of knowing with any certainty for whom they are voting, since the party lists are not revealed. Parties change names and positions on the ballot before<sup>15</sup> and after elections. As a result, deputies are accountable first, and in most cases only, to their party leadership. Many deputies "represent" departments where no one knows them. This is particularly the case in the most populous departments, where there are a large number of deputies. For instance, the Department of Francisco Morazán elects 23 deputies. No single one of them is likely to feel especially accountable to constituents in the department. In smaller departments, well-known departmental leaders are recruited by the parties to run. If elected, the accountability they feel toward those from their department often runs only to those in their party, and not to the shared interests of the department's populace.

#### 4.1.1 Opportunities and Constraints

Both traditional parties are now coming under increasing pressure to change the ways they have always operated. One former congressional deputy described the PL as a "democratic party that's conservative" and the PN as "a conservative party that's become democratic." Her appreciation neatly summarizes

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<sup>13</sup> The army collaborates with the TNE to ensure order at the polls and the security of ballot boxes.

<sup>14</sup> The total per department is set in proportion to each department's population.

<sup>15</sup> One example of this occurred last year when the name of the former attorney general did not appear on any PL ballots during internal party elections but did appear on the ballot for the national elections.

changes in the two parties that have been occurring in the two parties that came to a head during the last elections.

Traditionally, the Liberals were close to the labor unions, while the Nationalists were the military's party of choice. During the 1982-2001 period when the Liberals ruled for all but four years, the PL slowly became conservative, and the PN looked for ways to gain power. During the last elections, both parties campaigned in new ways.<sup>16</sup> The PL mounted a very public campaign to have the TNE disqualify Maduro from running as the PN candidate due to questions about his Honduran citizenship.<sup>17</sup> The TNE was not able to resolve the issue, and Maduro eventually prevailed, but the PL kept up its attack throughout the campaign. Meanwhile, Maduro decided to run on a political renovation and law-and-order platform. His reform agenda included four main areas:

1. reduction in the size and number of state institutions;
2. decentralization of services;
3. civil service reform, including the elimination of statutory commitments to public sector unions; and
4. more efficient government functions, including improved budgeting, internal controls, and performance measurement.

Many of Maduro's ideas were opposed not only by the PL, but also by traditional politicians in his own party, although both remained quiet during the campaign. Maduro reached out to civil society in ways that had never been done before, and the result was a series of five declarations signed by all candidates with different elements of civil society. The PL never embraced civil society the way Maduro's faction of the PN did, and instead gained its enmity by regularly issuing public criticisms of civil society activism.

Maduro's successful campaign brought about two changes on the Honduran political scene. First, civil society actors now have a voice in public policy issues and political reform. Second, a new way of distinguishing Honduran politicians may be beginning to emerge. The distinction between the PL and most of the PN is less noticeable than that between those two groups and the Maduro renovation wing of the PN. Whether the renovation wing—and the Maduro Presidency—will be successful in implementing reforms is an open question. Despite the fact that the PL candidate promised many of the same popular reforms as Maduro, PL leaders are resisting change. Additionally, much like Vicente Fox of Mexico, Maduro is having significant problems with his own party getting behind the more far-reaching reforms on his agenda. Both civil service reform and direct election of Congress lack support from the party rank and file. The general public also appears somewhat suspicious of Maduro's cabinet, which is drawn heavily from banking and financial circles. Several sources consulted by the Assessment Team speculated that Maduro would have to reshuffle his cabinet in the coming months since it had become clear many of his ministers lacked political abilities. A few think he will reach out to civil society again.

Other factors are contributing to pressures for changes in the way political parties operate in the electoral arena:

- split voting and open ballots;
- consensus among parties that the TNE needs reform;
- statements by the Church; and

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<sup>16</sup> Many of the ideas that follow were presented in *Proceso Electoral 2001: Monitoreo desde la Sociedad Civil*, published in April 2002 by the *Foro de Fortalecimiento a la Democracia* (FFD) and CEDOH; the General Coordinator was Victor Meza.

<sup>17</sup> Maduro was born in Panama; his mother was Panamanian, and his father was Honduran. Both he and his mother were registered as Honduran citizens several years ago by the RNC.

- the increased focus given to political reforms by the “*Manifiesto de los Partidos Políticos al Pueblo Hondureño*” (“*Manifeisto*”) signed by all five presidential candidates on September 4, 2001.

Separate ballots for elections of municipal officials, used during the last three elections, have begun to change the way citizens and locally elected mayors and other officials relate with each other, sometimes resulting in more cooperation in local governance and attention to constituents. During the last elections, separate ballots for congressional deputies were used for the first time, and one result was the absence of a majority in Congress by the winning party (PN). It received 46.4 percent of the national vote versus 40.8 percent for the PL and a total of 12.8 percent for the three minority parties. Apparently, Hondurans are becoming more accustomed to splitting their votes. This has already had an effect on the way the PN is operating in congress. At the local level, both citizens and elected officials are very aware of the differences that listing candidates names on ballots has made. This may increase pressure on parties to list candidates on congressional ballots as well.

The “gentlemen’s agreement” among political parties that the TNE would never be used to restrict each party’s freedom to run itself and political campaigns as they pleased was shattered by the PL’s request to the TNE to nullify Maduro’s candidacy. This was followed by maneuvers by other parties that led all of them to worry that the TNE would continue to be manipulated by opposing parties against their interests, and this made them more willing to consider reforming the TNE.

Another significant factor in last year’s elections was the issuance of a document by the Catholic bishops titled “*Vota con Responsabilidad*.” In it, they praised democratic advances made since 1980, especially advances made in local governance. On the other hand, they denounced the gap between traditional party leaders and the interests and needs of the people; the lack of political party plans to address poverty; the existing political system’s lack of openness to new social forces; and harmful political practices such as buying places on party ballots, issuing campaign promises that cannot be kept, and participating in political patronage and corruption. The bishops called for reform of the *Ley Electoral y de las Organizaciones Políticas*, and the Church sponsored voter education activities that some believe may have influenced voters to break away from traditional party voting patterns and consider splitting their vote.

Although many party leaders did not welcome the increased influence of civil society in political matters, they saw how Maduro benefited from accepting this reality and decided at least to give the appearance of doing likewise by participating in the signing of accords with civil society. The most significant of these was the September 4, 2001 “*Manifiesto*” regarding electoral reforms signed by all five presidential candidates on behalf of their parties. It lists commitments for reform in eight areas, and those commitments now provide a framework for Honduran political reform. Under UNDP auspices, the five parties set up a *Comisión Política* in May 2001 to define the commitments. That Commission continues to meet, as does a related group of lawyers appointed by each party to draft constitutional and legal amendments necessary to implement agreed reforms. During the Assessment Team’s visit to Honduras, it was already evident that the work of the Commission had stalled, and civil society actors were discussing ways to exert pressure on the parties to comply with their September 4 commitments.

Careful reading of the “*Manifiesto*” reveals that it was drafted to maintain party prerogatives with respect to individual party relationships with civil society (a term not used in the “*Manifiesto*”). The language of the document does not indicate whether the reforms as stated will be implemented (“The Political Commission has proposed the bases for the following reforms...”), or the degree of commitment to each of the reforms mentioned and their specificity. Nevertheless, the “*Manifiesto*” is a very significant document from which political parties will not be able to retreat very far, especially if Honduran civil society actors—with international support—keep pressuring. The eight reform areas are:

1. TNE reform, to include appointment of members who will not represent political party interests and serve for six years;
2. Establishment of the RNC as an independent body;
3. Consideration of a constitutional amendment to allow plebiscites and referendums in national elections;
4. Reduction of primary campaign periods to 45 days and general elections to 90 days;
5. Allowing parties to form alliances between or among themselves;
6. Unspecified reforms in election and party financing;
7. Continued study of alternative ways to elect congressional deputies; and
8. Changes in the “presidential designates” system.<sup>18</sup>

## 4.2 National Government Arena

Traditionally, the party that won national elections “owned” the government for the next four years. It controlled both the presidency and Congress—and through those, the branches of government, the courts, and three of Honduras’ four independent governmental authorities (the TNE, the *Ministerio Público* [MP], and the Controller General [CG]).<sup>19</sup> The party then exercised executive and congressional branch authorities, and intervened as necessary in the courts and nominally independent bodies to ensure benefits accrued to party members and allies. Campaign promises were not seen as binding, and the will of the president mattered most.

In this system, government policies changed every four years, even when presidents from the same party succeeded each other.

Governmental decisions, big and small, were made on the basis of negotiations within the ruling party, between the two parties, and between governmental authorities and interest groups seeking preferential treatment. Executive branch effectiveness in providing social welfare services, establishing sound economic policies, and carrying out other duties was thus compromised. Congress never developed an executive branch oversight capacity, nor did it ensure adequate performance of regulatory bodies. Finally, the administrative capacities of both the executive and legislative branches were never adequately developed to carry out the People’s business.

Some examples of recent actions taken by national governmental authorities to benefit party members and allies mentioned to the Assessment Team include:

- International Telecommunications Services (ITS) obtained a license to offer Internet Services, imported equipment, and made other investments only to have HONDUTEL (the state-owned telecommunications company) exert pressure on the *Comisión Nacional de Telecomunicaciones* to revoke its license. HONDUTEL then obtained a pre-trial criminal court detention order against ITS executives, who had to flee the country and abandon imported company equipment.
- Numerous 20-year tax holidays have been granted to business leaders to invest in fast-food franchises when their agricultural investments are no longer as profitable as they once were.
- Titles to land near Atlantic coast protected areas have been obtained by party elites who farm it or are holding it speculatively for tourism. For example, according to *Garífuna* (ethnic minority) sources, land was title to Jaime Rosenthal, PL leader and one of the richest men in Honduras.
- GOH funds were used last year to bail out the owners of four Honduras banks holding bad loans made to companies affiliated with the banks’ owners.
- The GOH refused to license savings and loan cooperatives to enter the insurance business to serve rural members due to resistance by those owning Honduran insurance companies.

<sup>18</sup> Refers to replacing the current system under which the president names “designates” to represent him/her with the formal election of a vice president.

<sup>19</sup> The fourth independent authority is the *Comisionado Nacional de Derechos Humanos* (National Human Rights Ombudsman), created in 1995, which has succeeded in maintaining its full autonomy on the basis of the independence and integrity with which the first ombudsman, Dr. Leo Valladares, carried out his duties, and on the insistence of Honduran civil society leaders and international donors.

The previously mentioned politicization of the electoral tribunal is not an isolated problem. Another example along the same lines concerns the Controller General (CG). Last January, Congress voted to create a *Tribunal Superior de Cuentas* to replace the CG. This type of governmental financial control entity is structured like the TNE (as a court with both investigative and judicial powers). The *Tribunal Superior de Cuentas* law was passed in secret, and the Maduro Administration reportedly made an agreement that the PL would name its president. When CSOs working to combat corruption heard about this secret arrangement, they raised concerns and Congress delayed implementation of the law for the time being. Those opposing the measure see it as a means for party officials to politicize the GOH CG function, both by institutionalizing political interference through establishment of a *Tribunal Superior de Cuentas* whose members are effectively appointed by political parties, and by giving that body both investigative and judicial powers. (The current CG has only investigative authority. Although the CG has also been politicized due to the fact that presidents have been able to appoint those who serve, at least the justice system was left with official authority to pass judgement on cases presented.) Additionally, there is normally no requirement for a *Tribunal Superior de Cuentas* to report to the legislative branch, nor to exercise its own independent external accounting control. This maneuver by the two main parties shows that politicians and their allies still resist efforts to strengthen governmental financial controls and accountability to citizens when doing so will affect their ability to use public resources for partisan purposes or illicit enrichment.

#### 4.2.1 Opportunities and Constraints

As a result of the PN not winning absolute control of Congress along with the presidency for the first time in Honduran history, the need to develop the governing capacities of Honduras' executive and congressional branches has been highlighted. It is still too early, however, to tell whether the need for better functioning executive and congressional branches is beginning to resonate among Honduran political actors. It is likely that demands for such reform will take a long time to emerge. Meanwhile, donors interested in assisting with public administration or legislative strengthening programs are likely to find it impossible to identify Honduran partners with sufficient influence and interest to make such efforts successful.

It is possible, however, that opportunities for strengthening the organizational capacity of one or more of Honduras' independent governmental agencies may arise. Among those, the CG is the one with which USAID has already been cooperating and may wish to continue doing so. The principal advocates of stronger government accountability are CSOs, the Church, and donor countries. USAID has been cooperating successfully with the first and last of these advocates, and presumably will continue to do so. A few business leaders also see the need to control corruption and improve governance, and may be willing to assist in such efforts.

Opposition to anticorruption efforts, although never overtly presented as such, will continue to come from those who stand to lose if controls are tightened. These include politicians, their allies in the public and private sectors, and members of political parties who depend on their parties for jobs and other government benefits.

The emergence of a bill to create a TC, despite its original motivation among party leaders, presents USAID and other donors with an opportunity to continue collaborating with CSOs to try to ensure that it reduces rather than increases politicization of Honduras' public control entity.

### 4.3 Legal Arena

#### 4.3.1 Constitutional Framework

The Honduran Constitution, adopted in 1982, formally recognizes the separation of powers and vests judicial review in the Supreme Court. In 2001, Congress ratified 200 constitutional amendments that



restructured the judicial branch, increased the size of the Supreme Court, and radically altered selection procedures for Supreme Court justices, defined specialized courts within the Supreme Court, and provided for the creation of a constitutional court to interpret and rule exclusively on the constitutionality of legislation. The enabling legislation (organic laws and regulatory procedures) that would allow the constitutional court to function have not as yet been enacted, and in April 2002 an audacious legislative proposal was made to transfer the power of constitutional interpretation from the judicial branch to Congress. If ratified, the amendment would eviscerate the essential power of judicial review, and would severely compromise basic precepts of judicial independence. With the support of USAID, CSOs and the National Human Rights Ombudsman have condemned the amendment as unconstitutional, and are working to block its passage.

Among the 2001 constitutional amendments was a reform supported by USAID and Honduran civil society that separated the appointment of Supreme Court justices from the national election cycle and extended their term in office from four to seven years. It set in place a new, more transparent process in which a judicial selection commission representing numerous relevant and interested parties (including civil society members) prepares a “short list” of 45 candidates from which Congress must select the 15 Supreme Court justices. The goal was to promote judicial independence. Traditionally, Supreme Court judicial assignments have changed with every administration and have been largely dependent on political favoritism. The new procedure was initiated in January 2002 to select a new Supreme Court, but encountered major opposition from Congress and the sitting Supreme Court (none of whom were on the candidate list). Civil society—in a remarkable demonstration of political will and commitment to legal reform—organized a public march and demonstration demanding compliance with the new law. As a consequence, Congress backed down and made the 15 judicial appointments, in accordance with the constitutional amendment, from the pool of 45 candidates submitted for selection. The congressional selection process was highly politicized and resulted in a Supreme Court whose membership is split almost evenly between the two parties. Although complaints of political allegiance and influence have already tainted the early operations of the newly appointed Court, everyone interviewed believed that the new process represents a significant step toward independence and a major advance for the rule of law (ROL).

The Constitution provides for the judicial branch to receive a three percent allocation from the national budget to cover operating expenses, but this has never occurred. Actual amounts have varied in the realm of two percent or less, and low salary levels of judicial personnel have contributed to ubiquitous corruption, especially at the lower levels. This year, the judicial branch has been promised its full three percent allocation as a demonstration of the current administration’s commitment to a truly independent, functioning judiciary.

## 4.3.2 Substantive and Procedural Laws and Reforms

### 4.3.2.1 Criminal

The centerpiece of USAID’s Justice Reform Program in Honduras in recent years has been support for the drafting, passage, and implementation of a revised Criminal Procedures Code (CPC) that incorporates guarantees of individual rights, freedom from arbitrary or lengthy detentions, oral and public hearings, transparency, and other fundamental elements of due process. As a corollary, USAID has also supported a number of criminal court reforms designed to improve case management and court administration. The new CPC replaces a written inquisitorial system with a more open adversarial system, and includes provisions for alternative case dispositions such as plea bargaining, restitution, community service, etc. It also differentiates criminal offenses by degree and category of severity, and affords prosecutors much greater discretion in determining whether cases merit prosecution. Previously, they had little choice but

to pursue prosecution of even the most minor matters, regardless of cost, practical considerations, or unfairness. Crimes were not categorized according to levels of severity, so even minor offenses could and often would lead to disproportionately severe punishment through lengthy sentencing or indefinite pre-trial detention.

The Honduran criminal justice system has suffered from inherent inequalities and power imbalances. The process has been riddled with corruption, inefficiency, inaccessibility, lack of accountability, and lack of transparency. The system has relied heavily on lengthy and sometimes indefinite pre-trial detention of suspects, often without substantial evidentiary basis, subsequent investigation, or judicial determination of guilt or innocence. People of wealth or influence have routinely circumvented the judicial system, and the law was perceived as punishing poor people who were essentially defenseless and without legal recourse. The new CPC was intended to remedy much of the inequity and imbalance that has characterized this system, to confer and protect individual rights and due process, to reduce impunity and opportunities for corruption, and to build a more credible, reliable, and transparent legal system.

The CPC was passed in 1999 and went into full effect in February 2002 after basic preliminary training and preparation was provided to various justice-sector actors for the dramatic change in the nature and conduct of proceedings. The first oral public trial was held in June 2002. Under the CPC, criminal investigation and prosecution are the responsibility of the Ministerio Público (MP), headed by a congressionally appointed prosecutor (the Fiscal General). The MP has received substantial and instrumental support from USAID for its creation, staffing, training, and continuing operation. Defense of indigents (the vast majority of criminal defendants) is handled by a much smaller and poorly funded Public Defender's Office that operates as a dependency of the Supreme Court. It suffers from a critical lack of resources, staffing, training, and capacity. USAID training and CPC implementation efforts have been directed primarily to prosecution, judges, and law enforcement authorities. The Public Defender's Office has drawn very little support, either foreign or domestic.

The new CPC and oral trial procedures are clearly a major step forward for the justice sector, but the new system is still extremely fragile and plagued with problems, and it will require substantial continuing assistance to secure its position and successful operation. The chief justice of the Supreme Court characterized the new system as a “crawling baby that still needs to be fed and helped to reach maturity and walk on its own”; she cautioned that enormous attention and concentration would still be required to assure security and avert failure. Numerous revisions to the CPC itself have already been contemplated and suggested, and much time will be required to work all the bugs out of the system. Typically, it has taken many years to establish and secure similar such revisions to CPCs elsewhere in Latin America, and Honduras has in the past required high levels of shepherding and accompaniment to cement other types of reform. The five-year transitional implementation period forecast by the Mission (in 1998) does not appear unreasonable or inconsistent with prior experience, but premature conclusion of assistance carries a substantial risk of jeopardizing and possibly reversing the progress achieved to date.

Several serious deficiencies in the judicial reforms have become immediately apparent and merit highlighting. The Public Defender's Office is in desperate need of strengthening, training, independence, and other crucial support to prepare its attorneys to represent indigents under the CPC and in trial. An adversarial system requires a balance between prosecution and defense if it is to succeed. Rich people will always have access to good lawyers, but poor people rely on and are entitled to public defenders. If poor people do not have adequate representation, their rights will not be protected. The power of the state will not be tested, the prosecution will win almost invariably, justice will not be done, and the legal system will never earn public confidence. As it stands, there is a debilitating imbalance between the prosecution and defense counsel. A law professor expressed grave concern that the Public Defender's

resources and representation are so woefully inadequate that it is “very easy to condemn an innocent defendant.”<sup>20</sup>

The MP also has its share of serious problems, relating largely to lack of prosecutorial capacity, inadequate technical assistance, and political interference with prosecutorial functions. Prosecutors need to learn how to utilize prosecutorial discretion and exercise judgment for the ultimate social goal of achieving the just resolution of cases, and not simply increasing prosecution case statistics. One criminal defense attorney complained that too often the “goal is to condemn, not to seek justice or the truth.” Troubling reports are surfacing that prosecutors are beginning to conceal evidence from the defense; this tendency will require strong monitoring and oversight to assure it does not become a practice. The Fiscal General reports that convictions are easily obtained against common everyday criminals and small crimes, but it is almost impossible to investigate and prosecute serious charges, such as corruption, against anyone with political or economic power.

In 2001, the Minister of Security evicted all prosecutors from their assigned posts at police substations when his extra-judicial order to release a colleague (brought in on charges of domestic violence, and later found to be implicated in numerous crimes, including an auto theft ring) was met with resistance from the prosecutors on duty. Recent attempts by the Fiscal General to prosecute a person with political power were met with congressional uproar and a backlash of motions to create a special prosecutor to oversee the Fiscal General. Perhaps most egregiously, Congress further protects and even encourages abuse of authority by automatically conferring complete, unqualified immunity for professional and personal conduct—including intentional criminal acts—to hundreds of public officials throughout their tenure. Immunity thus translates to impunity, and the cycle of corruption and abuse is perpetuated.

Defects in the investigative stages have been identified as the primary obstacle to successful prosecutions. An investigative police unit was originally established within the MP to aid prosecutors with criminal investigations. It was transferred to the jurisdiction of the executive branch (under the Ministry of Security) in retaliation for the MP’s investigation of congressional wrongdoing; now, the MP has no investigative unit, and prosecutors and police have not formed effective working relationships to develop and coordinate effective investigations.

#### 4.3.2.2 Civil

The substantive laws governing civil matters were not identified by anyone interviewed as a major issue or obstacle to investment, economic growth, or enforcement of rights. To the contrary, private civil lawyers with commercial practices reported that the governing substantive laws are relatively recent and adequate for their needs; commercial court justices concurred. The consensus was that the substantive civil laws (which include, but are not limited to, the Commercial Code) do not significantly discourage investment or restrict economic growth in Honduras; rather, the primary impediment is the more fundamental absence of a predictable, reliable, and transparent justice system as a whole (an enabling environment). The lack of a governing, enforceable, known set of legal rules is perceived as a serious deterrent to investment and economic growth. A judicial branch that is incapable, corrupt, or subject to

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<sup>20</sup> The glaring need for assistance in the provision of counsel to poor people accused of crimes is further illustrated by a national program now being initiated to identify people who have been held in jail longer than any potential jail sentence for their alleged crime, and who have no counsel of record. Those defendants will not automatically be released from prison; instead, their names will be given to the Public Defender’s Office, which will then be responsible for the extra work of initiating new proceedings for each individual defendant to petition for release. Statistics reveal that 89 percent of the current prison population has never been sentenced, tried, or convicted. Most, if not all, of those detainees are likely poor and entitled to services of the Public Defender’s Office. Under present circumstances, it is unclear how that office will be capable of fulfilling its essential duties and responsibilities.

political whim predictably poses a much more substantial threat to investor confidence than an imperfectly drafted legal code or specific provision in a narrow subset of law.

Even if substantive laws were the basic problem, revising them would not likely ameliorate the situation. Laws are widely and routinely ignored without repercussion in Honduras, and legal reforms have demonstrably failed in a number of spheres to change attitudes or behaviors (e.g., quota laws requiring 30 percent female candidacy on ballots, judicial career laws, ethics codes, etc.). Many Honduran laws are adequate, but lack enforcement due to the overall weakness of the justice system. If the application and enforcement of the law can routinely be avoided through political machinations, the substance of such unenforceable laws is not a logical or productive focal point for development efforts.

Procedural codes, however, are a different story. As in much of Latin America, the Civil Procedures Code in Honduras is antiquated, unwieldy, and does not facilitate the resolution of civil disputes. Case decisions are based on written submissions and closed proceedings. Civil court administration and case management are notoriously inefficient and require modernization. Procedural improvements in this area would provide significant benefits to a wide spectrum of society, as the majority of litigation involves civil matters, and this is the stage where most of life's legal issues are played out.

Several judges and private attorneys perceived the existence of a significant momentum for procedural code reform stemming from the recently revised CPC. They suggested that the time would be ripe to initiate similar reforms in the civil arena, and expressed enthusiasm about the prospect of incorporating oral trial proceedings into the civil system, which is plagued with particularly high levels of corruption. The IDB is currently developing a proposal for reform of the Civil Procedures Code, *inter alia*, and has solicited the cooperation of the Supreme Court. USAID has a proven track record of success in code reform, and would be well situated to contribute and transfer its expertise in code revision, as well as court administration and case management, to the civil system. Support for these reforms would likely include the private business sector, chambers of commerce, a core of private attorneys who practice in both criminal and civil law, and the Supreme Court.

#### 4.3.3 The Underlying Problem of Independence

The lack of judicial independence was identified, almost without exception, as the principal weakness of the Honduran justice sector and the basic foundational defect from which most other problems derive. A credible ROL cannot be established until Honduras has an independent judiciary to support prosecution, enforce laws, and fight impunity. Independence must be developed in order to achieve and effectively exercise judicial authority. The lack of judicial independence reaches beyond individual judges and permeates the institutions of the judicial branch.

Congress has persistently and historically intervened to control and manipulate judicial selection and decision making. The executive branch has a similar history, although the current administration has pledged support for judicial independence and authority. Since the recent change in Supreme Court selection procedures reduced congressional power over the configuration of the Court, Congress has tried to override this progress toward judicial independence by legislative fiat and other political gymnastics.

The Honduran Bar Association, the leadership of which changes with political cycles and allegedly coincides with party affiliations, has also waded into the waters of judicial independence. Most recently, the Bar Association took action to disbar the entire current Supreme Court, and then sought replacement of all the justices based on the fact that they were no longer members of the obligatory national bar and therefore were unqualified to sit on the Supreme Court. Interventions of this nature undercut the authority of the judicial branch and destabilize the ROL. Although the sitting Supreme Court is still reported to be

strongly tied and deferential to the political and economic actors involved in their recent selection, this will likely begin a gradual change that will predictably solidify into increasingly independent action after the next national election cycle in four years. The justices will remain for another three years to complete their terms, and their allegiance to specific political actors will presumably become more attenuated. Current public opinion, however, holds that the political and economic elite enjoy effective immunity from judicial sanction, and polls place judges, police, and the Congress at the end of the list of trusted social institutions.

In addition to horizontal influence, the judiciary is likewise importantly constrained by a lack of vertical independence within the judicial branch. Below the Supreme Court, judges are not selected or retained on the basis of merit, professional competition, or the application of uniform standards. A judicial school has provided training and education for sitting judges and judicial candidates since 1989, but appointments usually rest on political ties and connections. The chief justice has recently disclosed that there are a number of sitting judges, primarily at the lowest court levels, who cannot read or write. A judicial career law exists, but is not followed, and a revised version has been stalled in Congress for two years. No meaningful enforceable code of ethics or judicial conduct exists to sanction misconduct by lawyers or judges, or to assure accountability. The Supreme Court controls the selection and designation of all lower-court judges throughout the country. We were told that judges below the Supreme Court do not fear executive or legislative reprisal or interference in decision making (although admittedly a problem) as much as they fear the prospect of being suddenly fired and replaced for no reason other than political favoritism and cronyism at the upper judicial echelons. As such, little incentive exists to motivate excellence in judicial performance, which is largely irrelevant to employment status and security.

#### 4.3.4 Human Rights and Public Security

One of the great challenges in establishing a ROL is to balance effective confrontation of criminal activity with the legitimate exercise of public authority. Law enforcement and other officials must enforce laws and combat crime effectively and responsibly without violating procedural or substantive rights of individual citizens in overly aggressive attempts to identify criminal suspects or restrain criminal activity. This balance has not been achieved in Honduras, and is fast becoming a serious human rights issue.

In recent years, citizens have become increasingly alarmed by perceptions of rising violent crime and gang activity that the courts and law enforcement officials are incapable of controlling. In addition, Honduras is becoming a route for illegal immigration, drug trafficking, and organized crime. Public security, due to a sense of vulnerability, has assumed a leading role on the public and political agenda, and citizens have little confidence in a legal system that is seen as inefficient, slow, and corrupt.

Although high levels of violent crime are clearly significant factors undermining public security, widespread conclusions of unchecked, burgeoning crime rates are considered by those consulted by the Assessment Team to be based on publicity and perceptions. Honduras has no cohesive national criminal policies, nor does it collect or compile uniform crime statistics or diagnostics to support public opinion or inform official analysis. Interestingly, studies conducted by international actors indicate that crime levels spiked approximately six years ago, but have not risen much since. Information concerning crime statistics is undoubtedly incomplete and inconsistent. Notwithstanding, public insecurity has fueled a firm official response.

President Maduro was elected in part based on his strong position of “zero tolerance” for crime. President Maduro’s approach to crime reduction has been to hire more police officers and engage the military in

civilian crime control.<sup>21</sup> This approach, however, lends itself to increased violation of human rights and may exacerbate an environment conducive to abuse of authority unless strict measures are taken to monitor and control law enforcement officials. The “zero tolerance” pledge can be interpreted as encouraging law enforcement to act aggressively and even irrationally in detaining, torturing, or otherwise mistreating criminal suspects because they believe it is expected of them and they are confident of official support in carrying out presidential policy.

Unfortunately, this appears to be taking place. Allegations of human rights violations by law enforcement authorities have increased since the announcement of this policy, and human rights groups, prosecutors within the MP, and the National Human Rights Ombudsman are becoming alarmed over the questionable legality of law enforcement measures taken in the current fight against crime. The National Council of Internal Security, charged with the formation of national policy and police supervision, has not functioned effectively and the Ministry of Security is left as the principal agency controlling its own police officers. The MP has been stripped of its investigative police unit, and has no means to investigate alleged police misconduct except to report the suspected misconduct to the alleged violators themselves (i.e., the Ministry of Security). The National Human Rights Ombudsman<sup>22</sup> and his representatives throughout the country receive numerous complaints of human rights violations by law enforcement and corrections officers, but have only “moral authority” to investigate, publicize, and pressure prosecution. Recently, the Chief of Internal Affairs at the Ministry of Security “went public” with allegations that police and other security officers have been responsible for extra-judicial killings, multiple other crimes, and destruction of evidence, but that her reports to superiors went unheeded.<sup>23</sup> A climate of abuse of authority and impunity prevails.

A major emerging issue is the high incidence of extra-judicial killings in Honduras, investigated in 2001 by the United Nation’s (UN) Special Rapporteur on Human Rights. To date, only the National Human Rights Ombudsman and a handful of NGOs have raised serious concerns and objections to this phenomenon. These deaths appear related to gang activities, police misconduct, organized crime, drug trafficking, and vigilante justice carried out by paramilitary style groups. Street children have been frequent (although not exclusive) targets, and approximately 1,400 have been killed over the past four years without investigation or prosecution. The UN report, issued in 2002, heavily implicates the police and/or military in these killings; law enforcement officials were either responsible for the executions, or they condoned them by “turning a blind eye” to their investigation. In Honduras, the presence of these poor street children is believed to increase crime and, in the current environment, their execution is seen as a form of “social cleansing” that fails to stir public outcry. To the contrary, the victims of extra-judicial killings are generally assumed to be criminals or gang members and the public is receptive to “cleaning” the streets of crime. The lack of public condemnation thus validates the abuse of authority.

A significant number of police—especially in the lower and middle tiers—are poorly educated, corrupt, disrespectful of human rights, ignorant of the law, and lack confidence in the justice system they are hired

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<sup>21</sup> Justified by the president’s declaration of a “state of emergency.”

<sup>22</sup> The National Human Rights Commission began operating in 1992 pursuant to executive decree, and was recognized and established as an autonomous state institution under the Constitution in 1995. The Commission has regional and departmental offices throughout the country, and is directed by a National Human Rights Commissioner (Ombudsman), appointed by Congress. Its mission is to monitor and ensure respect for human rights and strengthen the ROL.

<sup>23</sup> The Chief of Internal Affairs first made her accusations public before members of the international press corps. The announcement compelled the National Council of Internal Security to convene, conduct hearings, direct investigation, and otherwise to assume a more active role in police control and supervision. The Council ordered the chief to desist from further media declarations, but also provided her with personal protection in light of the many death threats she has received. The publicity and official investigation of these allegations is encouraging, although the results and impact on institutions and practices remain to be seen.

to enforce. Some of them are “bad cops” fired for abuse of authority under previous administrations; others are ex-military personnel with a record of human rights violations, rehired in the current administration’s expansion of the police force.

The disparity between urban centers and rural Honduras with respect to security and the ROL is striking and disturbing. The ROL is weak and deficient in the principal cities, but is essentially nonexistent in much of rural Honduras, where a type of “frontier justice” based on vengeance and retribution often prevails. The police are less educated and more ignorant of the laws, and provide little if any protection to citizens, especially in the small outlying villages and mountainous regions. In these violent and essentially lawless areas, criminal prosecution is stymied by death threats made against witnesses, who often have to flee their homes and possessions just to stay alive. People are brutalized without legal recourse. Disputes are often resolved with machetes, and feuds lead to endless cycles of violent retaliation and death. Extreme disregard and shocking violations of girls’ and women’s rights indicate a clear level of serious human rights abuse perpetuated by a *machista* culture and condoned by the ignorance or willful neglect of law enforcement officials. Girls and women are regularly battered, raped, abandoned, or bartered between families as “peace offerings.” These girls and women are legally invisible: they have no voice, access, or legal protection. The Assessment Team was informed of cases involving brutal multiple rapes and kidnappings of very young girls and women by much older men; law enforcement officials refused the victims’ pleas for assistance when the rapists claimed that they were “girlfriends,” or “were wearing provocative clothing.” If steps are not taken to establish an ROL in rural Honduras—where over one-half of the population resides—cycles of violence, poverty, social instability, and extreme injustice will continue.

#### 4.3.5 Opportunities and Constraints

Although legal reform efforts have in the past met with mixed results, recent constitutional changes and code reforms have reinvigorated hopes and enthusiasm for additional reform. The time appears ripe to take advantage of this momentum, although Honduran actors interested in reform will continue to require substantial donor support and encouragement. USAID and other donors should be prepared to carefully identify individuals within the judicial branch, MP, Public Defender’s Office, National Human Rights Ombudsman, law schools, business associations, and civil society groups, as well as some private attorneys, who will be willing and able to exercise leadership for legal and judicial reform to varying degrees. For example, the Supreme Court will be a strong ally in obtaining and assuring horizontal independence, but is unlikely to exhibit commensurate enthusiasm in efforts to separate the lower courts from Supreme Court control and politicization. The current executive branch promises to be supportive of judicial independence, although its commitment has not yet been tested and success cannot be gauged. The international community is a strong ally.

Congress will assuredly be a staunch opponent to reforms that would reduce its power over the judicial branch, and will likely be joined by the Bar Association if it maintains an identity with political powers controlling the legislature, or continues to demonstrate opposition to the Supreme Court. The Ministry of Security may profess cooperation, but true collaboration may prove elusive unless and until that Ministry’s leadership implements and administers clear policies, practices, and disciplinary procedures to ensure that its officials enforce the law without abusing or violating human rights.

#### 4.4 Local Government Arena

Honduras has a long tradition of local governance dating back to colonial times, but legal recognition of municipalities as governmental entities was not granted until the 1927 Municipal Law. That law centralized governmental systems and services, and established local governments that were neither

accountable to their residents nor legally autonomous. In practice, however, a certain degree of municipal autonomy had already arisen, and continued to develop to some extent thereafter, as a result of inescapably local issues and needs imposed by the geographic isolation of many areas of the country, as well as the growth and expansion of essentially self-sufficient cities in the regions surrounding commercial banana plantations. This history of a certain degree of de facto autonomy is cited as a contributing factor to the success of more recent formal municipal development and decentralization efforts.

In the years following the 1982 transfer from military to civilian rule, national actors and international development partners began to explore the possibility of “municipalization,” the promotion of municipal autonomy. In 1990, the Honduran Municipal Reform Law was passed, and municipal strengthening programs—led by USAID—began to develop. That law changed the legal framework for local governance and granted autonomy to the nation’s 298 (then 297) municipalities. Municipalities were designated as the smallest unit of government recognized by Honduran law. The new law accorded municipalities some budgetary independence and authority to tax and collect certain revenues, and it provided for an annual transfer of funds from the central government.<sup>24</sup> The new law also required municipalities to allow citizen participation in governmental decisions by hosting at least five open town meetings (*cabildos abiertos*) every year. The *patronato*, or neighborhood association, is the smallest legally recognized unit of citizen association in Honduras, and has constituted the core of citizen participation under this law.

The Municipal Reform Law was later amended to further refine the parameters of municipal rights and responsibilities and, beginning with the general election of 1993, to provide for greater autonomy and accountability, and the direct election of mayors on a separate individual ballot.<sup>25</sup> These legal changes have further strengthened Honduran municipalities and local governance.

When the Municipal Reform Law was first passed, Honduran municipal authorities generally had little in the way of management skills or administrative capacity; likewise, civil society had little organization, and citizens had no unified voice. Educational opportunities were extremely limited, especially in the smaller rural areas, and even the most basic skills and training were lacking. In the context of citizen relations with government, a culture of demand and dependence prevailed. The pertinent actors were for the most part ill equipped to take on their new, unfamiliar functions and responsibilities. Without the provision of significant technical assistance and training on both sides of this equation, the application of the new law could have led simply to the decentralization of incompetence and corruption, rather than to meaningful citizen participation and strengthened local government responsiveness.

Municipal development has been a notable success in Honduras, and is regarded as an example and illustration for Latin America. Past decentralization initiatives in other Latin American countries have frequently failed because central governments were not genuinely willing to devolve power to local authorities or, when they did, such power ended up in the hands of local elites. In Honduras, a confluence of factors have contributed to successful municipal strengthening: free and fair elections, splitting off of the mayoral ballot so that local election choices are based more and more on local issues and needs rather than loyalty to a national candidate, strong local government assistance programs, and an increasingly solid mayors’ association. The rising power of local governments is widely perceived as a fundamental

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<sup>24</sup> The new law “guaranteed” municipalities as a group an annual transfer of funds from the central government of five percent of national revenues. Transfers of this size have never in fact been made; in practice, the amounts transferred have been less than two percent. This deficit is regarded by some as not having posed a major constraint to development, however, because most Honduran municipalities would be unable to effectively or efficiently manage the full amount.

<sup>25</sup> Prior to that time, mayors had simply been appointed by the party winning the national elections.



advance for democracy, and one of the most effective means of combating poverty and achieving democratic consolidation.

As already explained, Honduran culture and political practices have resulted in a confined power sphere that is centralized, elite, unrepresentative, and self-perpetuating. Municipal development has opened some spaces of political power and access, increased local government competence and responsiveness, and begun to amplify citizen awareness and responsibility. Although citizens have been accustomed to accepting unilateral directives from their government in a continuous cycle of demand and dependence, local government policies have now changed to allow input and incorporation of public opinion through negotiated processes. Moreover, local governments are becoming more responsive to local needs and better equipped to handle the added responsibilities of decentralization. National polls indicate that municipalities are now far more trusted than the national government. Thus, the critical DG issue of centralized power residing in an unrepresentative class of elites is being addressed at the local level.

Local government development in Honduras has begun to provide a counterweight to elite dominance of economic and political decision making. Accountability of municipal governments to local residents has begun to improve as a consequence of direct mayoral elections combined with new opportunities for citizen participation in local governance.

Although Honduras is still predominantly rural, demographic forecasts for the next 10 years predict a huge shift and migration to the larger (but not the principal) cities. The growth of intermediate cities will therefore become the focal point of assistance needs, and warrants increased attention. USAID has worked successfully with the Municipal Development Foundation (FUNDEMUN) to develop the resources and capacity of 46 municipalities in its “Secondary Cities” program, which encompasses moderately developed municipalities in the central corridor of economic activity in the country. This area is also developing into a significant route for illegal immigration and trafficking in illicit drugs, so the strength and development of these municipalities will become increasingly important. Not surprisingly, smaller municipalities suffer from much more severe limitations in resources and capacities, and have not progressed to the same extent.

#### 4.4.1 Opportunities and Constraints

For the first time since USAID’s Municipal Development Program began, the central government has placed a high priority on decentralizing authority to local governments. The Maduro government favors decentralization as an economic growth and poverty reduction mechanism, but only if municipal governments are capable of addressing basic development needs and handling increased authority. As a result of the president’s commitment to decentralization, it is now a topic of intense political interest. Decentralization has succeeded to varying degrees in Honduras, both in improving government performance and promoting citizen participation, but some politicians continue to present stiff resistance, mainly because of the prospect of losing political power. Despite substantial progress made, municipal capacities, including mechanisms to assure transparency and accountability, remain weak and subject to significant variation. Meaningful and productive participation of citizens in municipal development and operations is also lacking. Women are inadequately represented in both municipal and civil society organizations.

Honduran municipalities have been allowed to charge fees for services rendered, but their authority to tax locally to finance expanding services has been restricted. Municipalities now directly receive allocations of tax receipts reserved for them under the Municipal Reform Law (although not the five percent stipulated), but these funds included in the central government budget for transfer to municipalities are

often manipulated by congressional *diputados* to “reward” mayors from their own party and other local party members.

Although municipalities have been successful in promoting cooperation with citizens, their ability to do so more consistently depends on their fulfillment of commitments that require additional authority and adequate resources. Even if granted, some mayors and other local authorities may not desire the responsibilities commensurate with further decentralized of services. Citizens, likewise, will not participate in local governance efforts to address community affairs if they see that doing so does not make a difference.

How far decentralization will go is difficult to predict because of the many organizations whose interests are implicated and whose capacities are put to the test. AMHON and many mayors and civil society leaders who favor decentralization should be ready, however, to continue cooperating with USAID and other donors, both to fight for more decentralization and help promote citizen participation.

## 5.0 CONCLUSIONS AND RECOMMENDATIONS

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### 5.1 USAID Program Strategy

USAID's currently planned program for Honduras includes initiatives in the following areas: trade-based economic growth, improved health and education services, and DG (decentralization, rule of law [ROL], and anticorruption activities). Results obtained under USAID programs in all these areas will be significantly influenced by the degree of progress achieved in addressing the concentration of political and economic power.

USAID's main program goal is to reduce poverty by increasing economic growth through greater trade and investment. Increased growth will not come about unless Honduras successfully addresses the numerous factors affecting its competitiveness and ability to take advantage of new trade opportunities. For this to occur, those who enjoy power need to relax their control of political and economic decision making. This will not come about quickly, but the combination of current external economic pressures and internal political pressures now present in Honduras provide donors with an opportunity to help its reformers push the process along.

Working with other donors and Honduran civil society, the Mission can select key DG initiatives to support that, combined with efforts assisted by other donors, will help democratize decision making and improve governance in ways that are needed for Honduras to be able to improve its competitiveness. In Honduras' case, efforts to increase trade and investment and improve democratic governance need to go hand in hand, both to help spur economic growth, and to help ensure that any increases in national income reduce rather than accentuate wealth disparities and poverty. Without adequate attention to the concentration of political and economic decision making in a small and unaccountable elite, Honduras will continue to fail to implement the economic policy and business development measures it needs to take advantage of free trade opportunities, and any growth that might nevertheless be achieved will not likely help reduce poverty.

The Assessment Team recommends that USAID continue working in the ROL, municipal development, and government accountability areas. In addition, USAID should take full advantage of opportunities to help Hondurans address their country's primary DG challenge by working in a new program area: electoral reform.

USAID's choice of reform activities to support in each of these four program areas, or arenas, should be made in cooperation with Honduran and other donor partners by identifying important initiatives Honduran reformers want to take on after careful assessment of opportunities and constraints. Once activities are selected, USAID and its partners will need to keep Honduras' principal DG challenge constantly in mind so as to improve chances for obtaining positive results.

The Assessment Team recommends that, where possible, the Mission employ three strategic approaches in carrying out its DG programs:

- Promote citizen participation in governance at all levels.
- Cooperate with other countries in exerting diplomatic pressure in favor of democratic reforms and open markets.
- Undertake initiatives to defend women's rights and support women's leadership throughout Honduran society.

### 5.1.1 Citizen Participation

This strategic thrust involves expansion of USAID's efforts to help citizens and elected leaders change the way in which they relate to each other to govern Honduras. Changing the current paradigm involves encouraging and assisting citizens to meet individual and group needs through reliance on the institutions of democratic governance, rather than using political party and personal connections to obtain preferential treatment under the traditional rules of the game. For citizens, emphasis is put on collaboration and compromise with other community members to agree on self-help measures to meet shared needs, set priorities to pursue with elected officials and governmental organizations, and monitor governmental performance. Doing so requires adoption of different attitudes regarding responsibilities as citizens in a democracy, and development of new skills by citizens, elected leaders, and public employees. Many civil society leaders with whom the team spoke mentioned the need for civil society to move beyond protests and pressures for change to the formulation of feasible proposals for change. They are aware that doing so requires not only acquiring technical expertise but also learning how to engage in principled dialogue with citizens and elected officials who have different interests and perspectives, with a view to arriving at decisions transparently and by consensus.

USAID can expand efforts to promote citizen participation in Honduras at both national and local government levels in two ways:

1. by continuing to cooperate with CSOs, NGOs, and grass-roots organizations that are teaching citizens new skills, helping them participate in governance activities, and representing citizens' interests in advocacy activities; and
2. by providing technical assistance to municipalities and national government organizations interested in devising processes for participatory planning and reporting to citizens about what they are doing to carry out their governmental responsibilities.

### 5.1.2 Diplomatic Pressure

Given Honduran willingness to listen and respond to foreign government opinions and advice, even in areas that other countries find politically sensitive, USAID is in a position to complement the cooperation and assistance it provides to Honduran reformers with diplomatic pressure in favor of specific reforms. This can be done either bilaterally or multilaterally, depending on which approach is considered more appropriate and potentially effective in specific cases.

Bilaterally, USAID and its Honduran partners can cooperate with the Ambassador and other U.S. Mission elements to obtain media attention for special events, issue statements, lobby GOH officials and Honduran interest groups, and more. Multilaterally, the already functioning forums (see below) are very useful vehicles for facilitating discussion and collaboration among donors, the GOH and CSOs. By participating in established forums, USAID will continue to be able to raise issues, opine on those already under discussion, and push for action that will be more readily accepted by the GOH in a multilateral context than a bilateral one.

### 5.1.3 Women's Rights and Leadership

Subjugation of rights and opportunities based on gender carries high social costs and imposes tremendous economic burdens. It is inherently unfair, unjust, and intolerable in a modern democratic society.

Although there are undoubtedly strong, capable, and motivated Hondurans who have made some significant inroads in gender equality, the women's movement in Honduras is extremely weak, poorly funded, and largely ineffectual. International pressure caused the issue of gender to be placed onto the political agenda in Honduras 10 to 15 years ago, but the baton has never successfully passed to a national movement. By failing to protect the rights and incorporate representation of women, Honduras has neglected to take full advantage of the abilities of half of its citizens to contribute to economic growth, better social welfare, and more democratic governance. USAID would be well advised to incorporate efforts to overcome prejudice and contribute more fully to national development by seeking out opportunities to protect and promote women's rights in all programs it supports, and to stimulate equality in leadership and participation through education and training of both men and women.<sup>26</sup>

#### 5.1.4 Other Strategic Considerations

USAID/Honduras identified the following strategic considerations to take into account in the choice of DG program areas:

1. USG foreign policy priorities, and
2. Availability of funding for DG programs.

The Assessment Team consulted other U.S. Embassy personnel and referred to the fiscal year 2003 Mission Performance Plan. Democracy is cited as the U.S. Mission's highest priority goal, and within that area the following items are listed: promotion of democracy and internationally recognized labor standards, protection of human rights, adherence to the ROL, and a more efficient and fair Honduran justice system. The political officer stated that continuing to improve the ROL was the Mission's number one goal. Other goals mentioned in the plan are promotion of free trade agreements, anticorruption, and control of illegal immigration and drug trafficking. The DG program proposed above will contribute to progress in reaching these and other USG foreign policy goals.

The amount of DG funding anticipated to be available for Honduras over the strategic planning period is relatively high in relation to levels anticipated to be available to similar countries: six to eight million dollars per year. Honduras is also eligible to compete for millennium account funds when they become available. At the currently anticipated funding level, the Assessment Team believes there should be no problem financing significant programs in all four areas recommended. There are two reasons for this. The first is that very significant levels of DG assistance (especially in the ROL and decentralization areas) are scheduled to be available from other donors, most notably the World Bank, the IDB, Sweden, and the UNDP.<sup>27</sup> This will allow USAID to cooperate with those donors to ensure that components in each of the four program areas that the Mission believes are important are addressed, and to limit USAID financing to interventions where the U.S. has a comparative advantage, or where an issue of particular importance to the USG exists. The second reason funding should be sufficient is that many of the interventions recommended in the elections and political party area need not be costly since they consist of support for legal changes, policy reforms, and citizen awareness and advocacy.<sup>28</sup>

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<sup>26</sup> Real and lasting improvements to the status and role of women will require a sea of change in the attitudes and behavior of both women and men.

<sup>27</sup> Much of the UNDP's funding comes from bilateral donors that channel money through it.

<sup>28</sup> Although the financial costs for such activities need not be high, the nonfinancial costs of carrying them out in terms of staff time and political expertise and judgment should not be underestimated. Institution-building efforts, such as to strengthen the TNE, can be more costly.

## 5.2 DG Program Areas

### 5.2.1 Elections and Political Parties

Changes in electoral processes are needed in order to begin changing the direction of accountability of those elected away from party leaders and toward the electorate, and to break the monopoly hold parties have on Honduras' governmental organizations. Opportunities for electoral reform now exist due to:

- turmoil within Honduras' two main parties following the last elections,
- processes already underway to consider reforming the *Tribunal Nacional de Elecciones* (TNE) and various electoral laws,
- the reform-mindedness of the Maduro administration, and
- more civil society interest in the issue than at any other time in recent memory. Because of this, USAID and other donors have an opportunity to partner with Honduran reformers to change the way elections are carried out and political parties operate.

There is little doubt that electoral and political processes reforms are an uphill battle—they challenge the core of the nexus between political parties and economic elite. Several individuals close to the Maduro government told the Assessment Team that the president remains personally committed to electoral reform and would welcome donor efforts to engage in the area and keep it on the national political agenda. Given the newly found strength of civil society in Honduras, as well as the influence of the international donor community, the Assessment Team believes there is a good chance that a coordinated donor approach to electoral reform will result in significant reforms in the 2004-2009 period.

Forums have already been established in which the USG participates that can be used to launch USAID activities in this program area. Following the Stockholm Conference, the GOH and donors providing post-Hurricane Mitch assistance established a number of “mesas” for the purpose of coordinating donor relief and Honduran government and civil society actions. They are still functioning. One of them is the *Mesa de Gobernacion y Derechos Humanos* that covers justice, decentralization, transparency, public security, and human rights programs.

The UNDP houses the *Foro de Fortalecimiento a la Democracia* (FFD), which was established in 2000 as a forum for discussion and consensus building on national issues among a very wide variety of Honduran social actors. Representatives of 25 bilateral and multilateral donors also participate. The FFD aims “to facilitate construction of a long-term vision (2020) for Honduras..., monitor implementation of the GOH's Poverty Reduction Strategy..., motivate the practice of professional journalism..., provide a space for women to promote gender equity in policies adopted for economic development and democracy strengthening..., and assist donors to strengthen their support for key Honduran initiatives.”<sup>29</sup>

The forum most directly involved in electoral and political party reform issues is one limited to participation by representatives of the five political parties, the “Political Commission.” It too is housed in the UNDP, which has been using Swedish government funds to support activities through which the parties are exposed to alternatives for dealing with the political reforms mentioned in the September 4 “*Manifiesto*.”

#### 5.2.1.1 Recommendations

##### 5.2.1.1.1 Cooperation with Other Donors

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<sup>29</sup> Loosely translated from FFD brochure.

We recommend that USAID cooperate closely with the UNDP and other donors involved in political reform efforts. The opportunity to do so already exists under the auspices of the FFD to which the U.S. Ambassador belongs. Doing this would accomplish two objectives:

1. USAID would be able to avoid being blamed for “interfering in internal matters” by opponents of reforms it decides to support; and
2. USAID would be able to keep abreast of the status of political reforms, ensuring that issues of particular interest (such as direct election of deputies) are given attention, and assisting initiatives to which the U.S. has special expertise to offer.

The Swedish Embassy suggested another way of cooperating closely with other donors in the area of political reform: that donor program officers should maintain contact for coordination purposes.

The UNDP resident representative made an informal suggestion to the Assessment Team that we recommend USAID consider. By following more closely the discussions going on in the Political Commission, USAID would be able to offer support to the GOH to implement reforms the political parties have already decided to carry out, thus respecting politicians’ sensitivities and providing funding to carry out reforms when needed. He used TNE reform and institutional strengthening as an example, and in fact, the Assessment Team recommends that USAID seriously consider offering assistance for TNE reform at the appropriate political moment. Reform of the TNE is indispensable to electoral and party reform overall because the TNE needs to function effectively if any agreed reforms in electoral and party laws are to be meaningful. Offering USAID support in the manner suggested by the Resident Representative can allow USAID to get involved in political and electoral reform in a manner acceptable to Honduran party leaders, and add impetus to the political reform efforts now underway in the Political Commission.

#### *5.2.1.1.2 TNE Reform*

The *Ley Electoral y de las Organizaciones Políticas* needs to be amended to provide for TNE independence from political interference by the parties, and to regulate the conduct of political parties. Deciding whether to address any particular issue concerning political party practices in the basic law or in TNE regulations will require careful study. Among the topics covered by law might be:

- a statement on the fundamental role of political parties in Honduras’ democracy,
- basic rules to help ensure primaries and other internal party operations are carried out democratically,
- the content and integrity of electoral ballots,
- the fundamental principles of party/campaign finances, and
- the use of government financial and staff resources in campaigns.

The TNE’s most urgent internal need is to develop new procedures for nomination and approval of members and to help ensure that they make decisions as freely as possible from undue political party interference. The TNE also desperately needs to develop operating regulations and procedures to govern itself and the conduct of political parties, and for the resolution of electoral disputes. Topics of priority interest include party finances, ballot control, and ensuring non-party candidates are able to participate in elections according to existing law. Those procedures need to be transparent. Modalities need to be devised for informing the public about TNE activities, and for transparent exchanges of opinion between the TNE and actors from civil society and the political parties.

#### 5.2.1.1.3 Cooperation with Civil Society

To complement work carried out in cooperation with other donors, we recommend USAID undertake special initiatives to partner with coalitions of CSOs pursuing particular electoral reforms. If President Maduro does begin to turn to civil society actors for support in pursuing political reforms, his administration might welcome such USAID initiatives. We recommend USAID go beyond Federation of Private Development Organizations (FOPRIDEH) to catalyze the formation of single-topic civil society coalitions, not ignoring the interests and capabilities of FOPRIDEH members, but to ensure that a full array of civil society leaders (including university professors) have opportunities to participate. One organization that merits special attention is the *Asociación Nacional de Industrias* (ANDI).

USAID cooperation with civil society coalitions in this context would be similar to that already underway with CSOs in the criminal justice and anticorruption areas. Two types of activities would be involved: exposing civil society actors to alternative ways of dealing with specific political party or electoral issues, and helping them improve their advocacy efforts and cooperation with GOH officials pursuing reforms. So far, civil society actors have not been able to participate directly with representatives of political parties in discussions of political reform alternatives. Only party representatives participate in the Political Commission. Even if they were invited to participate, civil society actors and organizations lack the technical expertise needed to consider the pros and cons of various reform proposals. For example, the consequences of some proposals for reforming election of *diputados* need to be given serious consideration to ensure it is agreed that they would be appropriate for Honduras. A pure, single-member constituency system could ring the death knell for the smaller political parties. For instance, a winner-takes-all system would no longer allocate minority parties seats in Congress in accordance with the percentages of total votes. Civil society representatives participating in these discussions would benefit from instruction in, or exposure to, alternatives used in other countries to deal with various electoral challenges.

The team was struck by the breadth of consensus expressed among Hondurans interested in political reform on the need to reform Honduras' system for electing congressional deputies. Many see that reform of congressional elections is not only desirable, but also necessary if a whole range of other reforms are to take hold. Citizens from many sectors of society identified electoral reform as one of the most needed democracy and governance reforms. CSOs and political analysts are already discussing the shape reform should take, including proposals to open party lists, create single-member districts, or adapt a "mixed" German-type system. Together with improved ROL, electoral reform was at the top of the list of reforms mentioned to the Assessment Team. Political parties currently have no real interest in pursuing the issue, but USAID can support activities by civil society leaders designed to raise public awareness and discussion of alternatives for pursuing this basic reform.

Other reform areas where civil society advocacy might be considered include reforming of the election calendar, changing the immunity laws, and creating a more independent electoral tribunal. Whatever the specific areas of USAID assistance, the key is for the Mission to work with civil society leaders to select those which have most relevance to increasing the accountability of political actors to a broader spectrum of Honduran society, and to enable those civil society leaders to cooperate with well-intentioned GOH reformers when they emerge.

#### 5.2.1.1.4 Political Party Reform

We recommend that USAID tread lightly in considering any activity related to reform of political parties themselves (as opposed to their conduct related to elections and the interaction with government officials) because this is a sensitive and difficult topic with no apparent champions on the horizon. While the parties demonstrate little institutional will for reform, one means of starting to change party attitudes and



behavior is to work with young party activists. Two political analysts whom we interviewed spoke in nearly identical terms about how political party leaders act in very undemocratic manners within their parties. One opportunity to begin addressing this might be to provide constituency relations training for young leaders of the political parties, similar to the training provided by National Democratic Institute (NDI) in a number of Latin American countries, such as Mexico and Paraguay. While the payoff of such assistance would be years down the road, the potential benefits are great. Opportunities to address attitudes among those who have already risen within the current system appear limited.

#### *5.2.1.1.5 Program Management*

The Assessment Team recommends that USAID investigate how it can carry out work in this program area with alacrity and flexibility to respond to opportunities for reform when they arise. Two ideas the Mission might consider are: hiring individual contractors to work on staff rather than incurring the expensive overhead costs involved in contracting with a U.S. consulting firm, and not exclusively relying on contracts and grants for cooperation with CSOs.

### **5.2.2 Government Accountability**

Corruption in Honduras is intimately related to the country's primary DG problem of concentration of political and economic power in the hands of relatively few elite. Use of governmental authority to favor party members and allies has been tolerated because a sort of social pact exists between Honduran elites who control the two main parties and the majority of citizens who belong to them. The elite can enjoy the power they do as long as they share some benefits with other party members.

Seen in this context, it is evident that reducing corruption requires that Honduras' principal DG problem be addressed in its widest possible context: changing the way the elected and the governed deal with each other. Elected officials need to be accountable to the citizenry as a whole, rather than just to party leaders. Their actions once in government need to be subject to institutional checks and balances from governmental organizations they do not control. Citizens need to monitor the activities of those they elect, and find ways to make their demands known that are transparent to other members of society. Both need to act in the public arena taking into account the shared interests of their communities and nation, not only their individual and group interests. Designing an anticorruption program for Honduras keeping this wider context in mind can both help reduce the incidence of corruption and address the country's principal DG challenge.

Two issues related to Honduras' principal DG challenge need to be considered as USAID's anticorruption program is further developed. The first is the need to ensure that "supply-side" initiatives (those designed to strengthen GOH control entities and practices) take adequate account of political influences that can undermine their effectiveness. The second is the question of how best to design "demand-side" initiatives (those that involve support to civil society actors endeavoring to monitor the performance of government officials and to advocate in favor of transparency and law enforcement).

#### **5.2.2.1 Recommendations**

##### *5.2.2.1.1 Supply Side*

The Assessment Team recommends that USAID continue exerting all the pressure it can—both in partnership with Honduran civil society leaders, and diplomatically—to help ensure that measures taken to create a *Tribunal Superior de Cuentas* (TC) or to improve the Controller General's (CG) Office, reduce opportunities for political intervention. One of the principal concerns in this regard will be establishing

effective procedures for appointing TC members and monitoring their performance, or—if a CG is retained—procedures for congressional oversight. If it becomes clear that political interference in the governmental control function will be institutionalized, whether in a TC or CG, the team would recommend USAID refrain from providing its support because technical approaches for institutional strengthening in the absence of political commitment and safeguards do not work.

If a TC is established, sorting out responsibilities for investigation, prosecution, and sentencing of those accused of corruption or malfeasance will be important. TCs are normally responsible for investigations as well as sentencing. CGs normally carry out or begin investigations, but prosecution and sentencing are the responsibility of justice sector institutions—in the case of Honduras, the MP and the courts. From the point of view of checks and balances, the latter arrangement is preferable, but in countries where TCs are established, other issues remain. One is whether and to what degree the Supreme Court can review a TC sentence. Another is how prosecutors or other public servants such as the National Human Rights Ombudsman will coordinate with the TC if they detect or suspect corruption, or it is reported to them. If it is decided to retain Honduras' CG, one issue to consider is how to facilitate coordination among the CG, the MP, and the courts. Whether the CG or TC model is adopted, procedures need to be established to keep the public aware of anticorruption and governmental financial control activities so as to maintain public support for this work.

#### *5.2.2.1.2 Demand Side*

Activities by civil society can be divided into three categories:

1. advocacy of changes in the immunity law to restrict its application to official acts while in office,
2. advocacy in favor of stronger governmental transparency and anticorruption law enforcement, and
3. monitoring of the performance of official duties by elected officials.

For all of these activities, USAID can partner with CSOs interested in carrying out public awareness campaigns and citizen training. We recommend that USAID expand the scope of its efforts in this area, especially by reaching out to a wider variety of civil society actors.

Exhortations against corruption based on moral arguments are as common in Honduras as they are in other countries. Given the deep-seated nature of corruption in Honduras—that is, the public's toleration for the concentration of political power in the hands of economic elites as long as party members and allies benefit—such pleas will not make much difference. The team therefore recommends that USAID work with CSOs to help them couch their citizen awareness and training activities in the wider context of the need to change the relationship between Honduran citizens and elected officials.

Finally, both CSOs and government officials will need help developing cooperative processes that promote transparency and citizen monitoring.

### **5.2.3 Rule of Law**

A credible ROL supported by a well functioning justice system that resolves conflicts fairly and efficiently in accordance with clearly established and respected legal norms is essential to support democratic governance, protect individual human rights, and assure personal security. Moreover, it is increasingly recognized as a critical component of economic development. A reliable justice system promotes the peaceful and equitable resolution of civil and criminal disputes, balances governmental power, combats corruption and other abuse of authority, generates public confidence, and creates an enabling environment for economic growth. The Honduran legal system falls far short.

As in many other Latin American countries, the Honduran judiciary has not yet attained equal status with the executive or legislative branches of government. Despite some measure of initial progress, the judicial system is still too weak to contribute effectively to the balance of power required for a stable democracy, and the ROL suffers from serious defects that impair democratic development on a number of levels. The legal system is unable to confront rampant corruption in the public sector. No real security of person or property exists. The interests of the powerful dominate (even when overtly illegal), the justice system does not hold these groups or even the playing field in check, and the judicial system and law enforcement officials themselves have become a source of human rights abuses.

The weaknesses inherent to the justice sector reverberate into and further undermine the likelihood of progress in other sectors: environmental and other legislation is rendered unenforceable, women and other marginalized groups have no effective avenue to enforce individual rights or seek redress for violations, property and investments cannot be protected through normal routes of adjudication, funds for social programs and public works are siphoned off through corruption, tax evasion has become so routine and endemic that tax revenues have fallen short of minimal requirements to provide essential social services while maintaining macroeconomic stability, and so forth. The ROL has become increasingly recognized as a critical factor in Latin America's economic, social, and political development, and its integration into the global community. Citizen and investor confidence in Honduras are low. A credible ROL is a high priority for Honduras to meet the needs of a modern democratic society and market-based economy.

This assessment revealed an array of serious issues pertaining to judicial independence, the governing legal framework and systems (both criminal and civil), and human rights and personal security. Distilled to its essence, however, the critical and core weakness underpinning the Honduran justice system—from which many, if not most, of its other deficiencies emanate—is the persistent manipulation of a non-independent judicial branch by other entities and political actors.

Notwithstanding the magnitude of the challenges ahead, recent successful reform efforts have contributed to a moderate but broadening political will for further change. Expectations and enthusiasm have risen in the past two years with the passage of extensive constitutional amendments and modifications to the Criminal Procedures Code (CPC). Although international support for reform has had mixed results in the past, the justice sector appears to be in a position of flux and the time for reform might now be more propitious.

The judicial branch lacks horizontal independence (from the executive and the legislative branches), and suffers likewise from a serious lack of vertical independence from the Supreme Court down to the lowest courts. Although progress has been made in Supreme Court selection and tenure, the judiciary remains a target for political manipulation and congressional attempts to interfere with integral judicial functions. The new Supreme Court will predictably gain some independence as its term continues, but the problem of vertical independence will likely persist and continue to adversely affect the capacity and quality of lower court judges and judicial personnel. Accountability and enforceable standards of ethics and judicial conduct are sorely lacking throughout the justice sector.

The new CPC is a major advance, but serious long-term problems remain to be worked out. The Public Defender's office desperately needs substantial training and other wide-ranging support in order to balance a successful adversarial system. The MP requires continued assistance to develop sound prosecutorial judgment and otherwise enable and facilitate competent ethical investigation and prosecution of criminal activities at all levels.

In the civil arena, the lack of oral trial procedures and an antiquated, unwieldy Civil Procedures Code significantly impede the resolution of all civil litigation, including commercial disputes and other matters

that likely influence the environment for trade and investment. Court administration and case management systems are similarly deficient and would require corresponding improvements to successfully implement procedural reforms.

Human rights violations by public officials are increasing as crime is perceived to rise and a “zero tolerance” policy is enforced. The legality of measures taken in the crackdown on crime is an area of increasing concern. Grave problems within law enforcement sectors have led to abuses of authority, including extra-judicial killings, vigilantism, corruption, and “social cleansing.” Violence and “frontier justice” in rural areas prevails, and the ROL is often nonexistent or incapable of protecting the public—women in particular—and encouraging the peaceful resolution of disputes.

The IDB has announced a five-year, \$33 million legal and judicial reform program that is still in the design and development stages, but reflects serious commitment to the process of both criminal and civil reform. The project will be jointly implemented by the Supreme Court, the MP, and the Ministry of Security. Many stages and components of this project remain to be developed. IDB representatives told the team they were collaborating with other donors in this effort, especially the Swedish and British assistance agencies, and they expressed a desire to work more closely with USAID to coordinate efforts in spheres in which USAID has specific expertise or interest. This presents a good opportunity for USAID to assure broad continued reform, while targeting specific areas and avoiding duplication of effort. IDB appears to be assuming a leading role in this sector. The World Bank is also entering justice sector work in Honduras, but to what extent and in what areas is not clear. USAID would definitely want to be kept abreast of the World Bank’s work, especially if it decides to prepare a justice sector assessment for the country, which could be very useful to USAID. The UNDP is reportedly engaged in ROL work to some extent, funded with Swedish assistance. The Spanish Cooperation Agency is working with the Honduran police and has other ROL work in its plan, but has not in the past demonstrated consistent reliability or coordination of efforts.

### 5.2.3.1 Recommendations

#### *5.2.3.1.1 ROL Assessment*

The Mission should continue to target the ROL for further assistance and, in preparing its strategy and programs, consider whether to conduct a separate ROL assessment to focus assistance most productively. The Mission might also consider specific targeted analyses or user surveys, as appropriate.

A thorough justice sector assessment is necessary and desirable for several reasons. First, it will entail a more complete review and analysis of the numerous technical legal issues and multiple political influences—both within and without the judicial branch—that have contributed to the serious basic deficiencies investigated and outlined in an abbreviated fashion for this DG Assessment. Accordingly, it would focus the Mission more clearly and comprehensively on the most urgent needs and realistic potential areas for reform. A good assessment can also be used to identify and generate local reform leaders and gauge their capacity and commitment to reform. An assessment will also help USAID to solidly inform the direction, or redirection, of its program activities, and channel its resources most productively within a framework of donor cooperation and information sharing. Finally, an assessment will promote agreement between the international community and the GOH on programming needs, clarify and divide responsibilities, and ensure that activities important to ROL reform are included and implemented capably by other donors or by USAID. Toward this end, the Mission should ascertain whether and to what extent other donors—specifically the IDB or World Bank—have already undertaken or are planning to prepare similar assessments. If so, the Mission should determine whether those assessments are adequate for its purposes and decide what, if any, additional separate work is needed.

#### *5.2.3.1.2 Donor Coordination*

The Mission should encourage and participate actively in donor coordination activities, especially with the IDB and the World Bank. In that regard, the Mission should consider cooperating or collaborating on select components of the IDB project. This will promote consistency and oversight of the follow-on activities that relate to the CPC. Likewise, the Mission will better be able to leverage and target its assistance. A suggested area of work might be the Civil Procedures Code reform currently in draft proposal, as well as activities to strengthen civil court administration and case management. USAID has considerable experience and expertise in developing these projects in the area of criminal law. Application and transfer of USAID's previous experience to the civil side of the equation could provide great benefits.

#### *5.2.3.1.3 Criminal Justice*

The Mission should continue working to assure the successful implementation of the CPC. Work should continue with the MP and courts, with additional focus on developing a capable and independent Public Defender's office.

#### *5.2.3.1.4 Judicial Independence*

The Mission should develop a strategy and corresponding program activities to promote and encourage judicial independence, both horizontal and vertical. This would include work with the Supreme Court, lower court judges, the judicial school, civil society, law schools, and perhaps private business associations, *inter alia*. Activities should be considered that would encourage merit selection of lower court judges, provide training and continuing judicial education to judges throughout the country, implement accountability and anticorruption measures for the courts, and develop meaningful enforcement of codes of ethics and/or judicial conduct. The Mission should continue to cultivate and promote civil society involvement.

#### *5.2.3.1.5 Human Rights*

The Mission should consider developing a strategy and activities to promote the ROL and prevent human rights violations, especially with regard to rural areas and the protection of women's rights. The Mission should ensure that these issues are investigated and addressed within the justice sector assessment in order to inform and guide this part of the strategy. The approach should be comprehensive and incorporate human rights elements generally, as well as special initiatives for targeted technical assistance and training, into the Mission's work with the courts, the MP, the Public Defender, law enforcement authorities, and civil society. The Mission should consider including a citizen education component (as has been done successfully by USAID in other countries where rising criminal activity is a serious public issue, e.g., Peru). This would combat common public misperceptions and reactions that human rights assurances protect criminal offenders, and address any similar public concerns that have arisen or may arise under the new CPC sections allowing provisional release, plea bargaining, or alternative criminal case resolutions. The Mission should investigate and analyze the distinct and complex challenges to establishing a ROL and legal presence and protection in rural areas, focusing on protection of women's rights as individuals and as victims of crime and domestic violence. A focus on problems of access to justice and education of law enforcement officials should be included.

The Mission should give particular attention to developing programs or activities specifically aimed at promoting and securing women's legal rights and legislation, and ensuring adequate and capable enforcement of laws protecting women.

A final note with respect to police training: the team was informed that the Department of Justice International Criminal Investigations Training Assistance Program (ICITAP) previously working in the area of law enforcement education and training has been stalled, and that the future of the ICITAP program and the responsibility for future police training was unclear (as of the date of our investigation). Due to recent personnel changes, no one with the program was sufficiently informed and available at the time of our fieldwork to discuss issues concerning the current status and future prospects of the program. Of the international community, we were informed that the British and Swedish assistance agencies are authorized to work directly with police, but are not doing so in Honduras. The UNDP has expressed interest in becoming involved with security issues, but has not yet begun. The Spanish Cooperation Agency is currently working in the area of police training through its *Guardia Civil*, which has been very controversial because of its notoriety for human rights violations. The proposed IDB reform project incorporates some work with the Ministry of Security, but is essentially limited to development of information-sharing mechanisms. We understand and share the Mission's justifiable concerns with issues regarding sufficiency of police training programs, but we regrettably do not have adequate expertise or information available on which to base a knowledgeable recommendation in this area.

#### 5.2.4 Municipal Development and Decentralization

USAID's Municipal Development Project was designed to assist in the implementation of the new law; its activities sought to promote more responsive and effective municipal government, as well as meaningful citizen participation and contributions to local governmental decision making. Recently, the program's scope has expanded to include development of national legislation and effective lobbying techniques (by the mayors' association), regional economic growth, and increased attention to decentralization opportunities. In the early stages, no other donors were working in this sector. Although several have since joined in these efforts, USAID has nonetheless provided the most consistent and continuous assistance.

The USAID project will conclude in 2003. Alongside this DG Assessment, the Mission has contracted a thorough in-depth evaluation of the Municipal Development Project to identify its accomplishments, analyze its performance, and assess future trends in the municipal sector in order to help inform and focus the Mission's strategy for the following five years. The DG Assessment Team therefore deferred to the more extensive evaluation presently underway for detailed analyses and recommendations, and focused narrowly on the key municipal development and decentralization issues relevant to the principal DG challenge.

Representation and the building of citizenship are valuable in and of themselves, but they also help to reduce poverty by increasing general social and economic improvements. A Honduran academic expounded that a good way to create a better environment for economic growth is by promoting local productivity and local development projects that more realistically reflect local priorities, generate employment, and "create citizens out of poor people." As such, they become "protagonists in their communities," more conscious of their citizenship, more active and participatory rather than resigned and passive. This in turn creates more opportunities to channel the exercise of individual rights and control, and thereby escape poverty. If money and authority are simply transferred to local governments, however, without increasing the municipal capacities and the abilities of citizen groups to monitor and birddog the government, all that will be accomplished will be to decentralize corruption. For these reasons, decentralization must go hand in glove with citizen participation in order to create an environment for economic growth.

The areas of municipal development and decentralization present two main challenges related to the primary democracy problem in Honduras. First, citizens and elected local government officials need to

improve methods of interacting and learn how to work together effectively and productively in the course of local governance. Second, any resistance to decentralization efforts by members of the political elite concerned solely or primarily with protecting their own power base will have to be addressed and overcome.

Substantial additional attention is still required to foster meaningful civil society participation and productive relationships with local governments. At times, rather than negotiating for access and input into the process of decision making, CSOs instead advocate a civil society takeover or joint assumption of governmental functions. This position is extreme, unproductive, and ultimately undemocratic. These organizations need instead to help citizens learn how to cooperate within their communities and work with governmental actors and institutions to compel responsible, representative governmental behavior and help them fulfill political and social obligations. Formation of a balanced and productive working relationship between elected officials and civil society members is necessary to combat corruption, assure accountability, and improve governmental responsiveness to citizen needs. Accomplishing this requires both citizens and municipal government officials to develop new ways of operating.

Although some politicians and bureaucrats resist the changes in power that decentralization brings, many *diputados* are actively cooperating with AMHON and mayors in efforts to structure and pass key decentralization legislation. Dealing with politically motivated resistance to decentralization measures as they arise will require continued exercise of political skill by mayors and AMHON.

The current administration views decentralization as a means to reduce poverty as long as municipal capacity is sufficient to the task. USAID's prior work to build capacities at the municipal level has therefore prepared the ground for the current national government's decentralization plan. The decentralization process is at a crossroads. Important opportunities are on the horizon, especially in sectors such as health, education, social services, and environment. The international community is strongly in favor of decentralization, and has worked productively and collaboratively with one another and with the government to accomplish the substantial changes achieved to date.

USAID is acknowledged to have been the primary actor in this sector from the outset. Other donors have since initiated programs, many of which were built off the critical foundation of local capacities created by the USAID programs. There has been a very substantial and successful amount of coordination and information sharing by international donors in this sector, and the working roundtables have functioned well and are now dividing responsibilities. The Swedish embassy is working in this sector, as well as the UNDP, the IDB, and a small program of *Gesellschaft für Technische Zusammenarbeit* (GTZ, a German assistance agency). The Spanish Cooperation Agency is working with regional groupings of municipalities to create *mancomunidades*, and that program is reported to be sizeable and successful. The World Bank funds a community development program for infrastructure projects that covers the entire country and geographic areas containing 10 major ethnic groups (*Nuestros Raíces*).

#### 5.2.4.1 Recommendations

The Mission should review and consider the results and recommendations of the separate assessment being done to determine its best strategy for this program area.

The Mission should continue its active and successful collaboration with other donors.

##### 5.2.4.1.1 Citizen Participation

Subject to the recommendations of the separate assessment, the Mission should continue to work with municipal development programs (targeting in particular the intermediate cities), and significantly

increase attention to the promotion of citizen participation and productive relationships with government. In this regard, the Mission should also work to increase and promote the representation of women in both municipal governance and CSOs. In carrying out these efforts in partnership with Honduran NGOs and citizen groups, it will be useful to keep in mind that citizens have little experience in discussing options available to their communities among themselves, taking into consideration the interests of others, and arriving at agreements by consensus, let alone presenting consensus proposals to elected officials. Basic processes for principled dialogue and consensual agreement will have to be learned, and structures for interface with government officials will have to be devised.

#### *5.2.4.1.2 AMHON*

The Mission should continue cooperating with AMHON to strengthen its capacities. Two important areas for improving organizational ability are in drafting and obtaining passage and implementation of appropriate and necessary legislation, and promoting municipal government transparency and accountability.



## APPENDIX: INDIVIDUALS AND ORGANIZATIONS CONSULTED

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### General Topics

Mario Argueta, librarian, National University of Honduras  
José Ricardo Baca, Director, CID Gallup/Honduras  
Juan Antonio Bendeck, *Gerente Proprietario, Imparo*  
Julieta Castellanos, Sociology Department, National University of Honduras  
Benjamin Crosby, Management Systems International

Jose Escoto, Director, *Centro Editorial*  
Juan Ramón Martínez, professor and political analyst (Christian Democrat)  
Wilfredo Méndez, attorney and political analyst (FOPRIDEH)  
Ian Walker, Director, ESA Consultants

### United States Government

Douglas Ball, Director, Strategy Program Support Office, USAID/SPS  
Carlos Bakota, Public Affairs Officer, U.S. Embassy  
Denia Chávez, Municipal Development Project Specialist, USAID  
Lieutenant Colonel Cuellar, Milgroup, U.S. Embassy  
Christopher Cushing, Program Officer, USAID/SPS

Alexander Dickie, Deputy Mission Director, USAID  
Susan Fleck, Labor Attaché, Political Section  
Paul Fritz, Municipal Development Specialist, USAID/Washington  
Duty Greene, Program Economist, USAID/SPS  
Aler Grubbs, Honduras Desk Officer, USAID/Washington

Diane Leach, Education Officer, USAID  
Gail Lecce, Acting Director, USAID Office of Democracy and Governance  
Joseph Lombardo, former Acting Mission Director, USAID/Honduras  
Robert Maushammer, Acting Director, MDDI Office, USAID  
Marco Tulio Mejía, Education Officer, USAID

Catherine N. Niarchos, Democracy Officer, USAID  
Francisco Palmieri, Political Officer, U.S. Embassy  
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John Rogosch, Director, Human Resources Development Office, USAID  
Jolyene Sanjak, Economic Officer, USAID/LAC/RSD

Margaret Sarles, Director, USAID/LAC/RSD  
Lorena Segura de Aguilar, Cognizant Technical Officer, Transparency Activity, Casals and Associates (Institutional Contractor)  
Todd Sloan, USAID/Bolivia  
Paul Tuebner, Mission Director, USAID/Honduras

Raymond Waldron, Director, Agriculture and Natural Resources, USAID  
Dean Walter, Controller, USAID  
Sonia Zacapa, Justice Project Management Specialist, USAID

Sally Taylor, Coordinator, USAID/Honduras Transparency Program, Casals and Associates

## Honduran Government

Miguel Bonilla González, Coordinator, Office of the Presidency, Modernization of the State Project (IDB project)

Ricardo Callejas, Director, Presidential Commission for Modernization of the State

Juan F. Ferrera, Secretario Ejecutivo, *Foro Nacional de Convergencia* (FONAC)

Ana A. Pineda, First Assistant, National Human Rights Commission of Honduras

## Civil Society

CTH: Reina Dinora Aceituno (General Secretary), Hernán Montoya Martínez (Secretary for International Affairs [CTH] and President, Municipal Workers' Union of La Ceiba [SITRAMUNP]), Julian Valdéz Morales (President and Financial Secretary of the *Asociación Nacional de Campesinos de Honduras* [ANACH]), Julio Antonio Rodríguez Lagos (Education Secretary [CTH] and Executive Secretary of ACAN)

Daniel Duran, General Secretary, *Confederacion General de Trabajadores* (GCT)

*Federacion Sindical de Trabajadores Nacionales de Honduras* (FESITRANH): Mauro Gonzales

(Presidente), Armando Galdamez (Asesor Legal)

Carlomagno Amaya, Gerente General, FOCACH

*Asociación de Ganaderos y Agricultores de Olancho* [AGAO]: Rigoberto Erazo (President), Justo René Martínez M. (Vice-President), Porfirio Gueroa (Treasurer), Mario Daccarett .

ANDI: Mauricio Mejia (Director Ejecutivo), Tania Perez.

*Camera de Comercio e Industrias de Cortes*: Tomas Vaquero (Dir. Ejec.), Jorge Farah (Board Member), Esdvith Garcia C. (Dir. Ejec., *Asociacion Hondureña de Desarrollo Ecologico y la Seguridad Alimentaria*), Francisco Funes Castro (*Gerente, Novaconsult*), Oscar M. Galeano (*Gerente Gen., Plasticos Gamoz*).

*Cámara de Comercio e Industrias de Olancho*, Junta Directiva: Isabel Fonseca Aguilar, Roberto Garifunes, Raúl Rivera M., Marco Antonio Mentos, Kevin Jonathan Montalva, Mario Daniel Zambrano, Ramón Arturo Escobay, Irma Aracely Escobar, Omar Cerna García (*Diputado* for Olancho), Hector Felipe Posas, Estanislao Rodríguez Ortiz, Carlos Arturo Cerna, Elman Joel Sandoval [Juticalpa, Olancho] *Camera de Comercio de Juticalpa*, Olancho (15 members)

Juan Canahuati, President and CEO, Loveable Group

José León Aguilar, Coalition for Justice; and President and Board of Directors, FOPRIDEH

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## Rule of Law

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Nyrma Aguilar de Pon, National Coordinator, External Cooperation Program, MP

Jaime Banegas Z., Director, Judicial School

Marco Tulio Barahona Valle, Justice, Supreme Court of Honduras

Doris Clark, Sub-Director, *Asociación Hondureña Predicar y Sanar* (PREDISAN), Catacamas, Olancho

Rigoberto Cuellar, Chief, Juridical Technical and Training Unit, MP

José Edgardo Flores, Regional Coordinator, MP, Juticalpa, Olancho

Hector Fortín Pavón, Former Judge, Court of Appeals; Former National Technical Legal Adviser to DPK Consulting, USAID/Honduras Justice Sector Project

Julibeth Garay, prosecutor, MP

Xiomara Lainez, Public Defender

María Elena Matute Cruz de Hernández, Justice, Supreme Court of Honduras

Roy Edmundo Medina, Attorney General of Honduras, MP

Eidelman Mejía, Assistant Director, Public Defense Institute

Luz Ernestina Mejía P., former congresswoman (PL), private attorney/notary

Vilma Ceclia Morales M., Chief Justice, Supreme Court of Honduras

Mario A. Morazón, Public Defender

Daniel Moreno Paredes, Coordination Specialist, FOPRIDEH

Leila Marina Raudales T., Public Defender

Celvin A. Ruiz, Public Defender

René Suazo Lagos, law school professor, *Universidad Autónoma de Honduras*, and private attorney

Edith Urtecho, Director, Public Defense Institute

Carlos Villar Rosales, private attorney

### **Municipal Development/Decentralization**

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Juan Carlos Elvir Martel, Mayor, Santa Rosa de Copán

Mirtha González, Executive Director, FUNDEMUN

José Rubén Henríquez Ordóñez, Mayor, Municipality of Juticalpa, Olancho

Nicolás Irías Zelaya, Coordinator, Juticalpa Municipal Council of Organized Civil Society

Efraín Jurcios J., Vice Mayor, Municipality of Juticalpa, Olancho, Honduras

Guadalupe López, Executive Director, AMHON

José Antonio Samperi, National Coordinator, *Programa Fortalecimiento Municipal y Desarrollo Local* (PRODEMUN)

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